CONVERGENCE OF CORPORATE GOVERNANCE IN STATE-OWNED ENTERPRISES: A CASE STUDY IN AN EMERGING MARKET USING OECD GUIDELINES

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Abstract

This article investigates an under-researched area of government activity and corporate governance reform, namely, corporate governance in state-owned enterprises. State-owned enterprises (SOEs) form a significant part of the economy in many countries and particularly in Asia. This article contributes to the larger corporate governance convergence debate by investigating whether arrangements originally conceptualised in the private sector prior to going global have indeed gone global and extended into the public sector. The article approaches the problem by investigating three interrelated questions posed by Clarke (2011): whether convergence could occur, whether it is occurring and whether such convergence is a good thing. Using a combination of DiMaggio and Powell's (1983) institutional framework, convergence theory and doctrinal methods, the article sets the Organisation for Economic Co-operation and Development (OECD) Guidelines on Corporate Governance of State-Owned Enterprises as a benchmark and assesses Philippine state-owned enterprise law and practices. The analysis revealed a high level of convergence. We find evidence that convergence was occurring by a series of high-level dialogues, that it was open and sufficiently non-prescriptive to allow selective adoption and adaptation to local context. In evaluating the convergence, we believe that the benefit to the overall welfare of the Philippines outweighed the drawbacks.

Keywords: Corporate Governance, State-Owned Enterprises, OECD, OECD Guidelines on Corporate Governance of State-Owned Enterprises, Institutionalism

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1. INTRODUCTION

Corporate governance remains an important topic of research (Lund & Pollman, 2021) and the transnational migration of norms and codes particularly so (Hill, 2021). Any discussion of corporate governance implicates not only the organisation of the internal affairs of the corporate bodies but also the role that they play in the wider economy in the production of goods and services made available to the public (Bottomley, 1997, p. 277). Corporate governance itself includes a view that corporations are but one vehicle among others for achieving broader societal goals (Sheehy, 2005, p. 194). To date, the vast majority of the research on corporate governance, including research on Asian businesses, has focused on corporate governance in private, for-profit corporate enterprises. This situation, however, does not necessarily reflect the structure of the economy in Asia and as such represents a significant gap in the literature.

The economies of Asia host a large number of significant state-owned enterprises (SOEs). Most companies with state ownership that belong to the 2000 largest companies in the world are domiciled in mainland China (Organisation for Economic Co-operation and Development [OECD], 2016, p. 20). The basic function of asserting state ownership of enterprises in China is centralized to an agency, the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) (OECD, 2016, p. 27). China began its major reforms on state ownership of enterprises in 1984 (Zhang, 2006, p. 132; Gnan, Hinna, Scarozza, & Montaduro, 2010), driving Chinese researchers on measuring the success of changes in the framework of corporate governance that is unique to China. Zhang (2006) considers corporate governance as a "qualitative" yardstick of success (p. 132). As a result of the process of reform, Teng, Fuller, and Li (2017) argue, using quantitative metrics, that the corporate governance of SOEs was affected by the different fiscal measures applied to central and local levels of Chinese bureaucracy. China's ongoing SOE reforms represent other Asian economies' policy direction, that of looking into the basic problems in state-owned firms.

The basic conception of the corporation (and all law) as being to support the well-being of society can be applied to SOEs in the Philippines, known locally as Government-owned and Controlled Corporations (GOCCs). This idea of a social welfare objective for GOCCs finds policy mooring with the Philippine 1987 Constitution, which provides that such corporations may be created "in the interest of the common good and subject to the test of economic viability" (The Constitution of the Republic of the Philippines of 1987, Section 16). Such social welfare objectives are not bound by economic logic which creates challenges for governance.

While generally, the focus of comparative corporate governance studies is on publicly listed corporations (Clarke, 2011, p. 76), the Organization for the Economic Co-operation and Development (OECD) itself acknowledges that "[t]he scale and scope of state-owned enterprises in many Asian economies calls for specific attention to be given to their corporate governance" (OECD, 2010, p. 5). In the Philippines, for example, there are 120 GOCCs (Governance Commission for GOCCs [GCG], 2019, p. 14) operating in various sectors such as finance, housing, tourism, power, natural resources, and transportation (GCG, 2018, p. 8). In 2018, in the Philippines, with a gross domestic product (GDP) of USD330.9 billion, the GOCCs accounted for USD169.0 billion (Php7.9 trillion) in assets, USD5.0 billion (Php225 billion) in comprehensive income[1], and USD59 million (Php2.9 billion) of remitted dividends to the national government (GCG, 2019, pp. 18–26). These figures are comparable to those of the eight largest publicly listed corporations in the Philippines and are included in the list of the world's largest companies (Tomacruz, 2017).

The GOCCs do not stand still economically or politically; rather, they serve the state and the government of the day in different, not altogether wholesome ways. The enactment of Republic Act No. 10149 or the GOCC Governance Act of 2011 (GCG, 2012a, pp. 7–10) is a response to the demand for significant changes in the GOCC sector which, for many decades, has been accused of operating with chronic inefficiency, unjustified expenses, and massive debts and losses (Briones & Zosa, 1987, p. 13). This law came at a time when international standards were evolving. In 2005, the OECD adopted its Guidelines on Corporate Governance of State-Owned Enterprises (the SOE Guidelines). The SOE Guidelines were updated in 2015. Among the Working Party's participants were the Philippines (OECD, 2015, p. 4).

One focus of the comparative corporate governance literature is on the convergence or divergence of corporate governance legal regimes. This research aims to contribute to a global policy agenda of increasing economic development. The basic assumption is that by helping (or directing) countries to adopt "best practices" in terms of corporate governance, the economic performance of countries will improve. An economic normative agenda that has developed out of this research is that common-law systems are superior to civil law systems because their corporate governance arrangements implement market institutions (La Porta, Lopez-de-Silanes, & Shleifer, 2008). As a result of this private enterprise focus of much of the corporate governance research, however, there is very limited research on convergence among SOE's corporate governance. This article aims to investigate whether there is evidence of these private trends towards convergence with respect to SOEs.

[1] *The Bangko Sentral ng Pilipinas* — The Central Bank of the Philippines — uses the term "comprehensive income" in its 2009 Notes to the Financial Statements. In accordance with the Philippine Accounting Standard 1 (revised in 2009), Presentation of Financial Statements (effective January 1, 2009), an entity is required to present all items of income and expense recognized in the period in a single statement of comprehensive income or two statements: a separate income statement and a statement of comprehensive income. The income statement shall disclose income and expenses recognized in profit and loss in the same way as the current version of PAS 1. The statement of comprehensive income shall disclose profit and loss for the period, plus each component of income and expense recognized outside of profit and loss classified by nature (e.g., gains or losses on available-for-sale assets). Changes in equity arising from transactions with owners are excluded from the statement of comprehensive income (e.g., dividends and capital increase). An entity would also be required to include in its set of financial statements a statement showing its financial position (or balance sheet) at the beginning of the previous period when the entity retrospectively applies an accounting policy or makes a retrospective restatement (https://www.bsp.gov.ph/Pages/AboutTheBank/AuditedFinancialStatements/2009FS/Notes.pdf).

This article investigates the corporate governance of Philippine GOCCs using DiMaggio and Powell's (1983) theoretical framework. It does so using the three research questions proposed by Clarke's research:

RQ1: Whether convergence may happen.

RQ2: Whether it is happening.

RQ3: Whether it would be a good thing if it was to occur (Clarke, 2011, p. 96).

Clarke also suggested it was important to understand how it was occurring. To answer these questions, we undertake a scan of the major actors in the institutional environment and use legal doctrinal analysis for comparing and evaluating Philippine corporate governance against the OCED principles.

We argue that Philippine GOCC corporate governance exemplifies characteristics of convergence. Further, we argue that the convergence is a result of isomorphic pressures which have caused law reform. The foundational principles of the SOE Guidelines have been embedded in the national rules for GOCCs through the Ownership and Operations Manual for the GOCC sector (Manual) and through the Code of Corporate Governance for GOCCs (Code). Finally, the article argues that the observed convergence is a good thing for the Philippines. Thus, in sum, we find that isomorphic pressures on SOEs have pushed GOCCs toward convergence with OECD principles and that such convergence is good for the nation.

We believe this research makes a significant contribution to the literature concerning corporate governance of SOEs generally and in particular to their governance in the context of developing countries like the Philippines. It demonstrates the value of the OECD's work in the development of standards and strategies for dissemination. Further, provides important insights for policy makers in the Philippines and beyond in terms of strengthening the role of well-run companies in the economy.

The article is structured using the following framework. After the introductory section, Section 2 provides a literature review describing the nature of the problem. It emphasises the problem of corporate governance in SOEs which lack the monitoring pressures of shareholders and the issues associated with the convergence debate. Section 3 addresses the research methodology. Given the three questions involved, the article has three inter-related methods, namely, historical analysis, doctrinal research, and economic evaluation. Our results and discussion are presented in Section 4. We find that there is a potential for convergence, that it is happening, and that it is a good thing. We discuss the implications for the Philippines as well as for other developing countries. We also note the important implications for the OECD. We conclude in Section 5 summarising, indicating limitations and directions for further research.

2. LITERATURE REVIEW: ISSUES IN CORPORATE GOVERNANCE

Corporate governance can be defined in many ways, depending upon the point of view of the writer (Clarke, 2011, pp. 78–79). Regardless of which definition is preferred, however, the common starting point is the foundational doctrine of corporate law that the corporate body is a separate entity with its own legal personality and related rights and duties separate and distinct from those of its shareholders and directors (Sheehy, 2005, pp. 225–226). Corporate governance focuses on these rights and duties, particularly as they are allocated to the two corporate organs or legal categories, the shareholders and directors (Sheehy, 2005, p. 227), how these organs relate to the corporation itself, and how the corporation relates to other constituents like the customers, suppliers, community, and government (Monks & Minow, 2004). The study of corporate governance, thus, centers on how these interlocking relationships influence the direction of the corporation.

Broadly speaking, corporate governance consistently grapples with the following problem sets: 1) the agency problems arising from the diverging interests of corporate investors and managers (Coffee, 2001, p. 6)[2]; 2) shareholder versus stakeholder, which touches upon the question: *"For whose benefit the corporation should be run?"* (Clarke, 2011, p. 79); 3) international convergence of corporate governance (Cabrelli & Siems, 2015, pp. 113–117).

The agency theory rose as an analytical framework to investigate the findings of Berle and Means (1932). In their famous work, *The Modern Corporation and Private Property*, Berle and Means observed the phenomenon of separation of ownership and control prevalent in publicly listed corporations in the United States of that era. This separation, they noted, led to the fundamental problem of "unfettered management self-interest" (Bauman & Stevenson, 2008).

Roe's (2004) recent analysis posits that diffused ownership is, in fact, a classic host of the "principal-agent problem" — essentially that shareholders' interests clash with the interests of managers (p. 3). As Roe (2004) describes it "This 'agency cost', principal-agent, stockholder-manager alignment problem comes in two main varieties. One variety is of diversion, while the other is of competence, 'stealing and shirking' in its alliterative form" (p. 3). The first variety includes a scenario where managers divert firm value into their own hands, while the second covers a scenario where managers were not suited (Roe, 2004, p. 3). As Roe (2004) describes it "[a] manager never was up to the task (their selection was a mistake) or more plausibly because changed circumstances made the incumbent not right for this company" (p. 3).

This description of the agency problem is put into finance terms by Shleifer and Vishny (1997), who argue that corporate governance "deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment" (p. 737). Essentially, they mean that the "stealing and shirking" mentioned by Roe (2004), finds its test in whether investors can be reasonably assured that at least some of their money will be returned with interest or other increase. Although various solutions have been proposed,

[2] As Coffee (2001) writes, "In overview, a common denominator runs through the theories of LLS&V, Bebchuk, and Roe: Ownership and control cannot easily separate when managerial agency costs are high. Although they disagree about the causes of high agency costs, i.e., weak legal standards versus political pressures that cause firms sometimes to subordinate the interests of shareholders-they implicitly concur that the emergence of deep, liquid markets requires that the agency cost problem first be adequately resolved by state action" (p. 6).

mostly focused on aligning management and shareholder interests, for the most part, the agency problem is viewed as an intractable problem from a purely economic point of view. This situation leaves the intractable economic problem to law for a legal solution in the form of directors' duties (Blair, 2003, p. 4).

The second problem set addressed by the corporate governance literature, which is the shareholder-stakeholder debate, has been explained by Sheehy (2005, p. 240) as a framework to respond to the core issue: *"For whose benefit the corporation should be run?"*. This debate, too, was initiated by Berle and Means (1932) who, in the contest with Dodd (1932), argued it in terms of "for whom are corporate managers' trustees?" On the one hand, shareholder theory advances the principle that "the corporation is a bare contractual arrangement made for the benefit and control of the shareholder" (Sheehy, 2005, p. 209). On the other hand, the stakeholder theory holds that the corporate existence is a fruit of state concession and must be governed by those affected by the decisions and actions of the corporation (Sheehy, 2005, p. 201). Sheehy (2005) argued that stakeholder theory fits the broader policy objectives and positive law: "Corporations must be run for the benefit of the society and cannot be merely instruments of the state [or investors]" (p. 240). Such arguments fit closely with the economic theories of the early economist Adam Smith, who argued that the reason the market is allowed is that it benefits the public more than the mercantilist system he opposed.

A different approach is used by economists and finance scholars. Jensen (2010), using a management and finance lens to answer the question of the "fundamental purpose of the corporation", argued that "enlightened value maximization" and "enlightened stakeholder theory" are better answers than simple shareholder or stakeholder views (p. 32). The first concept contemplates that participants in an organisation be granted the capacity to understand the meaning of maximizing value and increase the possibility of achieving it (Jensen, 2010, p. 38). The second one takes off from the principles of stakeholder theory and "adds the simple specification that the objective function — the overriding goal — of the firm is to maximize total long term firm market value" as opposed to "short-term profit maximization at the expense of long-term value creation" (Jensen, 2010, pp. 38–39). In essence, Jensen (2010) was acknowledging the problem of alignment between management and shareholder interests was causing short-term time frames and suggested that the solution lies in changing the time frame with no changes to the law.

The third and final dialogue in comparative corporate governance investigates "convergence" as a key question (Clarke, 2011). The issue is critical for economic development as corporations are the key vehicles for investment, production, distribution, and wealth creation, and so finding optimal governance is significant for the development of the economies. Clarke (2011, p. 96) identifies three core discussions in the convergence debate. These are the reasons why convergence might happen, whether it is happening and whether it will be a good thing. Clarke (2011) believes that "even if economic pressures do drive firms toward a single model, it does not follow that Darwinian selection will actually result in convergence" (p. 99). Convergence is expected to happen only if the political, economic, and social environments of all corporate bodies are identical, "such that the same set of rules turns out to be optimal for all" (Clarke, 2011, p. 100). In the context of Asia, Iu and Batten (2001) argue that the urgency of reforms in response to the Asian economic crisis of the late 1990s prompted the introduction of the "Western system of governance" (p. 50). Cultural factors, however, among a range of other considerations have tended to impede the implementation of OECD principles, with ownership structures most resistant to change (Iu & Batten, 2001, p. 48).

Although convergence analysts and advocates have gained significant traction with their arguments, their views are not universally adopted. Branson (2001), for example, noted the possibility of international convergence of corporate governance but on a limited scale (p. 325). He argued that convergence in corporate governance may happen in certain areas only and "is far more likely to be regional rather than 'global'" (Branson, 2001, p. 362). He cites, as an example, the Association of Southeast Asian Nations (ASEAN) whose process of regional integration could be a potent force towards regional convergence to attract more foreign investments (Branson, 2001, p. 362). Branson's argument, like others who are more sceptical about grand neo-classical economic narratives, considers the potential value of social logic in explaining phenomena. Among other things, it points to the importance of considering non-economic theories and methods not only for answering our question but for the broader dialogue.

A subset of these dialogues has developed for SOEs. This subset has had less success and finds the tools of microeconomics of less utility in the public sector corporations than in the private sector (see, e.g., Tomasic and Fu, 2006, and Whincop, 2005). In particular, the markets for finance, corporate control, managerial talent, and products are not operative or at least insufficient to provide the regulatory effects on corporations as theorised in microeconomics.

3. RESEARCH METHODOLOGY

To answer Clarke's (2011) three questions requires consideration of three different theories and their three distinct, related methods. First, whether convergence may happen, which shall be taken to mean a process whereby the Philippine legal system starts to mirror the functional components of OECD SOE Guidelines, a range of methods could be used. Given our conceptualisation of corporate governance as an institution as well as our particular interest in the institutional context of Asia and the Philippines in particular as part of the larger international dialogue on corporate governance, we framed the research question as an institutional question. This query then requires an institutional method to develop an appropriate answer.

The institutional approach requires identifying pressures on GOCCs which would drive them to adopt different aspects of an ideal model of corporate governance. While the common literature

on convergence among private sector companies follows empirical analysis and economic narratives concerning matters such as the adoption of shareholder primacy, stage of economic development, and legal origins (Katelouzou & Siems, 2015, pp. 127–160), we believe these rationalist approaches fail to capture the major driving forces shaping GOCCs, particularly as companies not subjected to the same market forces as private companies and as such, other stories need to be taken into account to explain changes that may be found. Instead, we posit that GOCCs are subject to different institutional pressures. We see a combination of broader global dialogue, excessive inefficiencies, and government efforts at reform as the institutional environment driving change. Thus, from a methodological perspective, we believe DiMaggio and Powell's (1983) theory of isomorphism, a theory that explains when and why organisations change in response to changes in their environment provides a better explanation for GOCC behaviour.

DiMaggio and Powell (1983, pp. 150–154) identify three types of pressures that they denominate as normative, coercive, and mimetic. They describe the three as follows: "Coercive isomorphism results from both formal and informal pressures exerted on organizations by other organizations upon which they are dependent and by cultural expectations in the society within which organizations function" (DiMaggio & Powell, 1983, pp. 150–151). This type of pressure is difficult to identify and quantify; however, it is evident in every organisation's environment in some form or another. DiMaggio and Powell (1983, pp. 151–152) describe mimetic isomorphism as occurring when organisations face uncertainty. In this environment, they adopt the behaviour of leading organisations in the same field as a way to deal with that ambiguity as a type of risk management creating legitimacy for themselves and their approach to problems (DiMaggio & Powell, 1983, pp. 151–152). Finally, DiMaggio and Powell (1983, pp. 152–154) describe normative isomorphism as the result of professionalization, particularly in the university educational process. This process, they argue, produces creates "a pool of almost interchangeable individuals who occupy similar positions across a range of organizations and possess a similarity of orientation and disposition that may override variations in tradition and control that might otherwise shape organizational behavior" (DiMaggio & Powell, 1983, p. 152). In other words, as professionals are formed, they adopt very similar ways of looking at things and methods for solving problems (DiMaggio & Powell, 1983, pp. 152–154). As a result, their advice and control lead them to drive organisations to greater similarity regardless of location (DiMaggio & Powell, 1983, pp. 152–154). Combined, these isomorphic pressures drive organisations, particularly those that are not in competitive markets, toward similarities.

Beyond DiMaggio and Powell's (1983) institutional theory, other scholars add two other pressures which come to bear on organisations. These are standardisation and resource-based institutional rationales. Brunsonn and Sahlin-Andersonn (2000) argue that as standards are dispersed around the globe, they are adopted and lead to convergence. Further, organisations are required to seek out those resources necessary for their survival, including, of course, economic resources (Brunsonn & Sahlin-Andersonn, 2000). Thus, in the words of Pfeffer and Salancik (1978), organisations such as GOCCs follow resource dependency. To apply this institutional analysis we use the following method: identify the main actors in the environment and then identify and review influential policy developments in terms of statements and events from which we conclude.

In terms of GOCCs, coercive pressure comes from a number of organizations, including regional governments, transnational bodies such as the highly influential OECD[3], and international banks. A further source of coercive pressure is the result of the clearly failing regulatory framework. That framework, in its essence, relies on a coordinating agency designed to address problems as they were understood in the 1950s using methods from that era. It has been clear within and externally to the Philippines that this regulatory framework is outdated and needs to be reformed. Normative pressures come from the emergence of a wider global professional discussion of corporate governance generally (Stout et al., 2016).

The GOCCs are experiencing memetic pressure as a result of the numerous public allegations of large inefficiencies. These allegations, found in various publications, indicate that the organizations are operating in an ambiguous environment and do not have clear answers to their operational and financial problems (Villamejor-Mendoza, 2014, pp. 140–142). This failure of economic efficiency leads also to normative pressure. Professionals inside the Philippines as well as around the globe are able to see the failure of their professional colleagues to solve the problems of the GOCCs. This negative scrutiny pressures the professionals to take action to change the state of affairs within the GOCC.

Our next question, concerning whether convergence is occurring, requires a new consideration of methodology. Broadly speaking, a study examining whether the corporate governance of Philippine GOCCs is converging towards the SOE Guidelines, is a trend question, an empirical question for which an empirical method is appropriate. Such a study would include creating variables, identifying appropriate data, and developing an empirical analysis of those variables. From our point of view, however, this type of analysis fails to capture the institutional ethos we are interested in investigating. Corporate governance, after all, is far more than an exercise in quantification. Thus, while a quantitative statistical study is one way to approach a trend analysis, the current study focuses on legal text. As such, our analysis relies on the identification of nuance and for that reason, a doctrinal approach is preferable.

Our doctrinal method involves an analysis of the international standards against the past and present domestic regulatory configurations and regulations. In particular, our analysis uses

[3] As Branson observes, "A second influence on the behavior of managers in large multinationals is the work of international organizations such as the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (World Bank), the United Nations, the Office for Economic Cooperation and Development (OECD), and the World Trade Organization (WTO). These organizations set standards of behavior, for the most part, through the promulgation of codes of conduct suggesting appropriate corporate behavior for multinationals" (p. 671).

the seven categories of the OECD SOE Guidelines as the international standard and examines the extent to which the Philippines have moved toward them. To do so, we examine the Philippine legislation, beginning with the position in the 1950s when the first co-ordinating agency of GOCCs was inaugurated up to the GOCC Governance Act of 2011 implemented through two regulatory instruments: the previously identified Ownership and Operations Manual for the GOCC Sector and the Code of Corporate Governance for GOCCs (as noted, the Manual and the Code, respectively).

Finally, in terms of theory and method for answering the third question, the question of evaluation, we use in the first instance a lens that reflects the economic goals of comparative corporate governance policy. In terms of the method specifically, we note the constitutional provisions marking the utilitarian value of a potential contribution to the economy of well-governed GOCCs. We also consider argumentation in favour of non-economic goals of convergence. These arguments, in line with the broader institutional perspective of this article, consider normative values beyond economic lenses and as such, we consider this methodological approach superior.

Given that the evaluation we are attempting to make is not a simple economic calculus but a multifaceted matter we also consider the social lens of colonialism in evaluation. We believe this lens is important as it can lead to the rejection of what might otherwise be useful innovations and pragmatic solutions, on the basis of non-utilitarian logic.

Thus, whether convergence is a good thing requires consideration of justifications and identification of the benefits of convergence as well as the drawbacks. In evaluating the Philippine GOCCs, consideration will be given to whether the much-desired reforms would have a positive social impact if successful, and whether transplanting is possible in this limited context of understanding international standards in functional terms. Given that our work is not empirical, the evaluation is not limited to the identification of the greater number. Thus, our evaluations rely largely on and are conducted by way of argumentation.

To test these theories applying the method, we rely on the OECD standard. The article turns to examine it next and particularly in relation to the Asian context.

The East Asian financial crisis of the 1990s swept across the region like a contagion and the Philippines did not escape its effects (Choi & Papaioannou, 2010, pp. 444–446). Despite the intense efforts of governments and international financial organizations, they were unable to stop the spread of depreciating currencies, falling stock exchanges, decreasing asset prices, and massive financial and corporate failures (Choi & Papaioannou, 2010, pp. 444–446). The financial crisis drew attention to the weaknesses in the governance of financial systems, with the under-developed market and regulatory institutions, problems of information asymmetries, and inexperienced market participants and regulators, among others (Clarke, 2017). Poor corporate governance has been identified as a major cause of the Asian financial crisis (Tsui & Shieh, 2002, p. 2).

One part of the response involved standardisation. The OECD, an international organisation assisting governments on social, economic, and governance challenges, has taken the lead in the promotion of good corporate governance (Wong, 2009, p. 25). In 2005, the OECD adopted the Guidelines on Corporate Governance of State-owned Enterprises (as noted, the SOE Guidelines) which guidelines were updated in 2015. The Philippines participated in the 2015 Working Party's discussions (OECD, 2015, p. 4). The SOE Guidelines were issued as a complement to the OECD well-known Principles of Corporate Governance (OECD, 2015, p. 3) (the CG Principles) that are applicable to publicly listed corporations. The SOE Guidelines are described as follows:

"Recommendations to governments on how to ensure that SOEs operate efficiently, transparently, and in an accountable manner. They are the internationally agreed standard for how governments should exercise the state ownership function to avoid the pitfalls of both passive ownership and excessive state intervention" (OECD, 2015, p. 7).

Relevantly, the CG Principles are considered the "starting points" of implementing "international standards" or "benchmark against which compliance can be measured" (Iu & Batten, 2001, pp. 51, 58). As Siems and Alvarez-Macotela (2017) point out, except for some rules, it is noticeable that the Principles have been formulated in a general fashion. This is deliberate, as they are not supposed to be a uniform "Act" but to offer different possibilities as to how good corporate governance practices can be achieved. This can also be seen in the way the CG Principles are meant to operate.

This generality allows the CG Principles to find broad applications around the globe, including in the Philippines.

As a complement to the CG Principles, the SOE Guidelines serve as a starting point or benchmark against which individual jurisdiction rules can be measured insofar as the corporate governance policies of GOCCs are concerned. The SOE Guidelines have seven categories of recommendations, as follows:

1. *Rationales for state ownership:*

The state exercises the ownership of SOEs in the interest of the general public. It should carefully evaluate and disclose the objectives that justify state ownership and subject these to a recurrent review.

2. *The state's role as an owner:*

The state should act as an informed and active owner, ensuring that the governance of SOEs is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness.

3. *State-owned enterprises in the marketplace:*

Consistent with the rationale for state ownership, the legal and regulatory framework for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs undertake economic activities.

4. *Equitable treatment of shareholders and other investors:*

Where SOEs are listed or otherwise include non-state investors among their owners, the state and the enterprises should recognise the rights of all

shareholders and ensure shareholders' equitable treatment and equal access to corporate information.

5. Stakeholder relations and responsible business:

The state ownership policy should fully recognise SOEs' responsibilities towards stakeholders and request that SOEs report on their relations with stakeholders. It should make clear any expectations the state has in respect of responsible business conduct by SOEs.

6. Disclosure and transparency:

State-owned enterprises should observe high standards of transparency and be subject to the same high-quality accounting, disclosure, compliance, and auditing standards as listed companies.

7. The responsibilities of the boards of state-owned enterprises:

The boards of SOEs should have the necessary authority, competencies, and objectivity to carry out their functions of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.

These SOE Guidelines, widely endorsed as they are, can serve as a benchmark for analysing and evaluating whether corporate governance in GOCCs in the Philippines is converging toward a global standard. They are an obvious source of isomorphic pressure.

With this background, we now turn to examine our three research questions: *Whether convergence may happen*; *whether it is happening*; and *whether it would be a good thing if it was to occur* (Clarke, 2011, p. 96).

4. RESULTS AND DISCUSSION

4.1. Whether convergence may happen

4.1.1. The emergence of a global discussion

Leading American comparative corporate governance scholars, Hansmann and Kraakman (2001) as noted, have argued, that the "law of business corporations had already achieved a remarkable degree of worldwide convergence at the end of the nineteenth century" (p. 439). They declared that in the world's leading economies, the organization of corporate bodies had become standardized, a norm and that the "core functional features of that form were essentially identical across these jurisdictions" (Hansmann & Kraakman, 2001, p. 439). This American-driven commonality, they argued, makes it possible for any expert in the field to be able to communicate to learners and non-specialists, the "core doctrines" of a corporation and "workable theories" of a corporation even without referring to specific corporate laws (Securities and Exchange Commission [SEC], 2016).

The wide acknowledgement of such a global discussion of doctrines and theories of the corporation creates a high comfort level of speaking about how the advanced economies face identical issues and converge in terms of patterns of corporate governance strategies and methods. The basic company objectives of attracting investments, selecting and maintaining the best managers, and dissemination of information are all considered "powerful forces" in various jurisdictions (Bebchuk & Roe, 1999, p. 134). While they argue that these and other powerful forces "drive countries and firms to adopt the most efficient corporate rules and structures" (Bebchuk & Roe, 1999, p. 134), this economic rationale, we have argued, may be less applicable in the context of GOCCs because they operate using a different logic, seeking to achieve other ends.

Nevertheless, there is likely some truth to the economists' explanation and as a result, perhaps a middle ground. Bebchuk and Roe's (1999) path dependency institutionalism, illuminates how isomorphic and economic drivers may work together in the context of the GOCC. They write, "Corporate governance could be seen as a technology — similar to a manufacturing technique, an inventory management system, or an engineering economy of scale — and firms face powerful incentives to adopt the best corporate technologies possible" (Bebchuk & Roe, 1999, p. 135). Thus, more effective technologies allow those who have adopted the technology to succeed ahead of their competitors. The adoption of this technology is itself a mimetic pressure, where organisations are pressured to adopt processes that mimic the processes of leaders in their fields of endeavour.

To date, among Asian countries, only Japan and Korea have formally associated themselves with the SOE Guidelines (OECD, 2016, p. 12). Representatives of nineteen other Asian governments, the Philippines included, however, send representatives to the Asia Network on Corporate Governance of State-Owned Enterprises (OECD, 2021). They do so, they state, "to share experiences, identify good practices and develop recommendations for reform to improve state ownership practices and strengthen the [SOE Guidelines]" (OECD, 2021). The Philippines has been participating in the fora since 2006 and has hosted two of the twelve meetings: one in Cebu province in 2007 and the latest in Manila in 2019 (OECD, 2021).

The active participation of Asian economies in these efforts to reform corporate governance of state-owned enterprises provides a strong and on-going opportunity for coercive and normative isomorphism to work. Leading professionals from all of the twenty governments meet regularly to share experiences and insights and to provide analysis and evaluation of one another's efforts. These professionals are the graduates of the region's leading universities and share the same ideas, views, and practices whether lawyers, accountants, or senior managers. Thus, while the forum is aimed at ensuring reforms considered key to cushion, if not to prevent, a financial crisis akin to the one that hit East Asia in the late 1990s (Clarke, 2017), the participation of the leading professionals from these countries is a significant source of normative isomorphism.

Turning to consider our question, the possibility of convergence of Philippine GOCC convergence, if one were to accept that "Corporate governance is a technology of business organization, just like lean production or indeed the assembly line itself" (Clarke, 2011, p. 92), the normative and coercive pressures at work, convergence is a distinct possibility for Philippine GOCCs.

4.1.2. Large inefficiencies

Again, isomorphic and economic frameworks can both help explain convergence where inefficiency is dramatic. An organisation suffering economic troubles will look to mimic other successful organisations, whether as a strategic move to accumulate financial resources following a similar strategy or in an effort to maintain legitimacy when it is challenged by evident financial failure. Different, non-market logics operate in these contexts (Meyer & Zucker, 1989).

Resource dependency suggests that organisations will respond strategically to accumulate necessary resources (Pfeffer & Salancik, 1978). While resource dependency, like most economic theories, focuses on private, for-profit corporate bodies, large inefficiencies can also be a potent pressure on SOEs. States have limited resources and will search for efficient corporate ownership and governance strategies. It follows that inefficient decisions of GOCC managers will at some point push legislators to reform law to seek better corporate governance systems.

In the Philippines, concerns about significant GOCC inefficiency began during the Martial Law regime of the 1970s and 1980s. That period fostered an unprecedented growth, not only in number, size, and resources but also in the "political clout" of government corporations (Briones, 1985, p. 375). The administration then exercised unbridled political discretion to increase the number of GOCCs from 65, comprised of 47 parent corporations and 18 subsidiaries in 1970, to 303 corporations that included 93 parent corporations, 153 subsidiaries, and 57 acquired assets (Briones, 1985, p. 375). In general, GOCCs did not deliver on their respective public mandates but instead plunged into low rates of return even when huge contributions were made by the National Government (Briones, 1985, p. 378).

Large inefficiencies were and always will be part of the workings of the government-corporate sector. In part, this may be because the government, unlike the private sector, will pursue non-efficiency directed goals, from equity, social development, and environmental care. These are the public good, a foundation for an equitable, harmonious society. Nevertheless, significant inefficiencies will lead GOCCs to mimic other organisations as they seek legitimacy and a strategy forward. A government is unlikely to fund a GOCC where its inefficiency is obviously unnecessary and extended. At that point, following the economic rationality of resource dependence, it can be assumed that pressure to conform to the norms established by leaders will be sufficient to cause it to change paths. As a result, inefficiency may lead to convergence.

4.1.3. Reform: Strengthening the co-ordinating agency

The Governance Commission for GOCCs (GCG), the Philippine GOCC regulator itself, acknowledged in *The First 200 Days Report* that "[t]he history of enacting reforms in the government-corporate sector is a study in policy shortfalls and weak executive action. Past administrations recognized the need for a monitoring body, but the attempts at creating one were half-hearted and lacked continuity and political will" (GCG, 2012a, p. 5) This failure provides additional rationale for the possibility of convergence.

The driver for convergence here explained as coercive isomorphism, occurs as a result of explicit, directed, government action. The government, despite many unsuccessful reforms, is forced by public necessity to strengthen the monitoring of corporate ownership in various essential industries, and unable to leave it to market forces, intervenes directly in the corporate governance of the GOCC. The most recent effort is not the first in terms of the use of coercive measures.

Although a review of the Philippine legislation shows that the earliest co-ordinating body can be traced back to 1950, four years after the declaration of the Philippine independence from the United States (Executive Order No. 936 of 1984), some authors consider that 1984 marked the first formal regulation of the public sector corporations by the promulgation of a presidential executive order that established the Government Corporate Monitoring Committee (GCMC) (Villanueva & Reyes, 2014, p. 44). Like earlier implicit corporate governance frameworks, however, the 1984 executive order emphasised only the state's role as an owner and used measures that were fiscal in nature, such as developing guidelines covering the funds from the general appropriations and foreign borrowings and their expenditures on major projects and programs (Memorandum Circular No. 10 of 1986). It failed to address many other aspects of corporate governance dealing with responsibilities of directors, shareholdings, and transparency — matters of particular concern in GOCCs.

After the fall of the Martial Law regime in the late 1980s, the new government prepared itself to rationalize the GOCC sector by reconstituting the Government Corporate Monitoring and Coordinating Committee (GCMCC) (Executive Order No. 236 of 1987). While the state reaffirmed its stance of adopting a co-ordinating agency, the policy choice focused on a fiscal rather than a governance strategy as evidenced by the visions of "public accountability", "efficient allocation and use of resources", and "financial discipline" under the relevant executive issuance (Executive Order No. 236 of 1987). More, the attempt to strengthen the GCMCC vested it with the authority to recommend economic sanctions, such as the "withholding of budgetary releases and imposition of additional financial controls on affected government corporations"[4]. Thus, the actions of the administration under a newly inducted Constitution (Administrative Order No. 59 of 1988) can be described, at most, as an effort of laying the groundwork to correct the fiscal failures of the GOCCs in the hands of a deposed dictator, with the corporate governance of GOCCs as a peripheral issue only.

There was evidence in law that the regulatory body in charge of GOCCs received steady pressure from the Office of the President to adapt. A subsequent presidential issuance (Administrative Order No. 59 of 1988, Section 8) established a two-

[4] The 1987 Philippine Constitution was ratified on February 2, 1987, just months before the reconstitution of the GCMC. The Constitution of the Republic of the Philippines of 1987, https://www.officialgazette.gov.ph/constitutions/1987-constitution/.

level regulatory structure and process, the first level being the assertion of oversight functions and powers by the department to which a GOCC is attached (Administrative Order No. 59 of 1988, Section 16) and the second level being the GCMCC coordinating inter-departmental collaboration and policy review[5].

Unlike the earlier legal documents, this presidential issuance endorsed aspects of OECD corporate governance strategies such as rationalizing state ownership, outlining the role of a state-owned enterprise in the marketplace, strengthening disclosure and transparency, and the responsibilities of the board. The advances made in terms of corporate governance reforms, however, were held back by the directive to focus only on GOCCs which the President deemed desirable as targets for monitoring — an approach that was antithetical to a broader legal framework with general application. In other words, despite being subjected to the coercive pressures from a more powerful institution within the departmental setup, the regulatory reach of the GCMCC as a co-ordinating body for GOCCs remained restricted then.

Convergence may rise from three compelling isomorphic pressures, beginning first with the emergence of a global discussion of corporate doctrines and theories that allow the free flow of ideas among professionals in terms of corporate governance strategies and methods. Second, perceived large inefficiencies at the national level also provide for strong mimetic and economic incentives for GOCC standards to converge and move away from the governance styles of the previous governments. Third, accounts of large inefficiencies are inseparable from the attempts to reform the government arm responsible for regulation, a form of coercive isomorphism. In this case, a co-ordinating agency carrying a clear mandate to promote a comprehensive government corporate governance framework, the ideal models of which lead to convergence with standards — a convergence toward standards.

We next turn to consider whether, in fact, convergence is happening.

4.2. Whether convergence is happening

The issue of whether convergence is happening is critical from a number of perspectives. Beyond the scholarly question, the issue has significant importance for policy makers at both national and global levels. At the global level, policy makers need to know the trends internationally to understand how effective international initiatives are and to advise international finance and trade bodies on such. At the national level, it is important for policy makers to understand when looking for potential areas to improve public investment, improve returns through efficiencies, and for identifying areas requiring law reform. In terms of method, as noted, a description of organisational arrangements will suffice.

We turn next, using doctrinal analysis, to examine the Manual and Code using the framework set out in the SOE Guidelines.

4.2.1. Towards convergence

The SOE Guidelines set out seven categories: 1) rationales for state ownership; 2) the state's role as an owner; 3) state-owned enterprises in the marketplace; 4) equitable treatment of shareholders and other investors; 5) stakeholder relations and responsible business, 6) disclosure and transparency; 7) the responsibilities of the boards of SOEs. We examine the Manual and Code in terms of these seven categories.

Rationales for state ownership

The SOE Guidelines' rationales for state ownership link the shareholder-stakeholder debate and the normative discourses regarding the issue: *"for whose benefit the corporation should be run?"* (Clarke, 2011, p. 79). It requires legislators and policy makers to consider the purpose of the establishment of an SOE. It provides the following answer: "The ultimate purpose of state ownership of enterprises should be to maximise value for society, through an efficient allocation of resources" (OECD, 2015, p. 17) a rationale that is fundamentally an acceptance of the stakeholder theory of corporate governance (Sheehy, 2005, pp. 200–205). It is not a for-profit logic in operation, but a public good/ public goods logic. A society-driven rationale is expected of GOCCs and is to inform its corporate governance structures and processes because it is that part of the economy "in which the government would play a strong direct role in the affairs of large business firms" (Hansmann & Kraakman, 2001, p. 446). In other words, the government is expected to be an economic actor in its own right, pursuing its policy agenda beyond the market rationale of profit.

The Manual (GCG, 2012b, pp. 6–7, Articles 3 and 4) embodies an overall rationale for state ownership, which is the promotion of growth through good corporate governance. The Manual also makes it clear that the National Government is the "the direct Agent of the State in pursuing the State's role and responsibilities, and enforcing the State's rights and prerogatives as the active owner of GOCCs and Subsidiaries" (GCG, 2012b, p. 9, Article 8). The GOCCs are clearly intended to be significant tools for economic development (GCG, 2012c, p. 6, Section 4).

The overall policy rationale for state ownership of SOEs as written in both the Code and Manual demonstrate convergence with the SOE Guidelines.

The state's role as an owner

Since the 1950s, much of the government-corporate policy framework has been aimed at clarifying the state's role as an owner (Barcena & Chua, 2013, p. 669). The second in the SOE Guidelines, "The state's role as an owner" (OECD, 2015, pp. 18–19) corresponds to the question. The SOE Guidelines suggest that "[t]he exercise of ownership rights should be centralized in a single ownership entity, or, if this is not possible, carried out by a co-ordinating body" (OECD, 2015, p. 18). This single

[5] Republic Act No. 10149 of 2011, an Act to Promote Financial Viability and Fiscal Discipline in Government-Owned or Controlled Corporations and to Strengthen the Role of the State in its Governance and Management to Make Them More Responsive to the Needs of Public Interest and for Other Purposes or the GOCC Governance Act of 2011, Section 5 (https://www.officialgazette.gov.ph/2011/06/06/republic-act-no-10149/).

ownership model is a critical difference between the GOCCs and private, for-profit bodies. The role of ownership in the for-profit entity from an agency theory perspective on corporate governance is to monitor management for purposes of ensuring the maximisation of profit.

In the context of the GOCC, however, the co-ordinating agency discussed above reshapes the basic model of a corporate body — with board members, stockholders, and assets structure (Sheehy, 2005). The legal structure of the GOCCs strengthens control of a government corporation by having ownership concentrated in the hands of the National Government and full control wielded by government appointees (GCG, 2012b, Article 8). Further, the GOCC is subject to a "central advisory, monitoring, and oversight body with authority — to formulate, implement and coordinate policies" in the GOCC sector, the GCG (Republic Act No. 10149, Section 5)[6] Therefore, while "[t]he Governing Board of every GOCC shall be primarily responsible for the management and operation of the GOCC" (GCG, 2012b, p. 14, Article 15), the GCG has the sole authority to recommend to the Office of the President their appointment, (GCG, 2012b, p. 17, Article 8) evaluate the performance and relevance of the GOCCs that they serve, (Republic Act No. 10149, Section 5) commence disciplinary actions, (Manual, Art. 20) and more importantly, issue the Manual and Code for their ready implementation (Republic Act No. 10149, Section 5).

The SOE Guidelines standardize corporate forms and oversight. For example, the SOE Guidelines support, according to GOCCs, full operational autonomy, and director independence, define the relationship of the GOCCs with relevant public bodies, and propose monitoring of targets, among others (OECD, 2015, pp. 18–19). These SOE Guidelines have gained traction as for the most part, they have been explicitly adopted under the Manual in the following policy directions: 1) ownership rights that respect the GOCC legal structure (GCG, 2012b, p. 6, Article 3); 2) right to representation and to vote in relevant stockholders' meetings (GCG, 2012b, pp. 7–8, Article 5); 3) full operational autonomy; 4) well-structured nomination and appointment process of the directors; 5) remuneration schemes; 6) reporting and evaluation systems (GCG, 2012b, pp. 12–13, Article 9).

The Manual and Code pursue a balance between an active state owner and an independent board. In this instance, there is evidence of the Philippines following the SOE Guidelines and, hence, convergence.

State-owned enterprises in the marketplace

The third recommendation of the SOE Guidelines, "State-owned enterprise in the marketplace," centers on ensuring a level playing field and fair competition (OECD, 2015, p. 20). SOEs are corporate bodies that are uniquely capable of carrying out regulatory and commercial functions at the same time. Considering this feature, the SOE Guidelines suggest that such dual spheres of competence be clearly delineated and the economic activities of SOEs be given a treatment comparable to those of their private counterparts (OECD, 2015, pp. 20–21).

These policies are aptly translated under the Manual as the principle of "competitive neutrality," introduced to ensure "that there is a clear separation between the regulatory and proprietary activities of GOCCs" and the "discretion to grant competitive advantages and benefits to GOCCS" (GCG, 2012b, pp. 13–14, Article 11). It is critical from the OECD's perspective that the discretion proposed to be resorted to only where it is justified by a "greater public interest" (GCG, 2012b, pp. 13–14, Article 11). The overall principle is for the state to refrain from engaging in economic activities that are adequately served by the private sector (GCG, 2012b, pp. 6–7, Article 4).

Market competition is a policy standard set out in the Manual, which permits a finding of convergence as well.

Stakeholder relations and responsible business

Stakeholder theory broadly holds that governance of the corporation should be not only by management but also by others affected by the decisions and actions of the corporation (Sheehy, 2005, p. 198). This theory takes on new implications when one considers the directors and managers of GOCCs as public officials within the civil service and who are, therefore, expected to be more circumspect in their decisions and actions towards the people whom they serve (Aguirre, 2013, pp. 851–852). These stakeholder-focused principles are at the fulcrum of the "Stakeholder relations and responsible business" as one of the SOE Guidelines (OECD, 2015, Part V, p. 23).

The overall stakeholder relation policy advocated under the Code is that no "member of the Board or Officer may take unfair advantage of the GOCC's employees, customers, suppliers, and other Stakeholders through manipulation, concealment, abuse of confidential or privileged information, misrepresentation of material facts, or any other unfair-dealing practice" (GCG, 2012c, p. 23, Part VII, Section 33). The Code (Part VII) has dedicated sections outlining the directives in regard to the treatment of and relation with corporate employees, customers, suppliers, and the approaches to the environment, health, and safety.

Governance of external relationships of the GOCC is a subset of the SOE Guidelines addressed in the Code. At this point, we believe there is evidence of convergence.

Disclosure and transparency

A core "institution of corporate governance" (Roe, 2004) is information which is, in fact, the essence of "Disclosure and transparency" in the SOE Guidelines (OECD, 2015, Part VI, pp. 24–25). Filipino citizens are the ultimate beneficiaries of GOCCs and, in this sense, for whom the National Government holds the shares of any government corporation. Filipino citizens need information about these national companies, for purposes of checking the boundaries of executive discretion, remuneration, and board decisions. This information

[6] Philippine law allows citizens to initiate criminal action, say for corruption, before the Philippine Ombudsman, a constitutional agency dedicated to erring public officials. An administrative case may also be filed before the same GOCC since its board has the power to discipline its own officers. Based on the Philippine Rules of Court, an individual may ask the Courts to nullify official issuances on the ground of grave abuse of discretion.

is critical for them to decide whether to initiate legal action to protect the interests of the corporation or the state against the executive (Roe, 2004, p. 10).

GCG's requirements on transparency and disclosure are stated in the Code: 1) the adoption of a Manual of Corporate Governance containing disclosures to be made by directors (GCG, 2012c, pp. 25–26, Section 42); 2) the mandatory setting up of a website containing information about the GOCC, board members and officers, finance, operation, and governance matters, and other information as the GCG may require (GCG, 2012c, pp. 26–27, Section 43); 3) the active participation in the integrated corporate reporting system, an electronic platform for the submission, storage, and access of various reportorial compliances (GCG, 2012c, p. 27, Section 44); 4) submission of mandatory reports (GCG, 2012b, pp. 22–24, Article 27).

National policies indicative of high standards of disclosure and transparency support a strong conclusion of convergence as well.

The responsibilities of the boards of state-owned enterprises

The agency problem entails both diversion, where government managers have an inclination to "divert value from the firm into their own hands" and corruption and incompetence, and "stealing and shirking" (Roe, 2004, p. 3). Addressing agency problems is the fundamental objective of "The responsibilities of the boards of state-owned enterprises" of the SOE Guidelines (OECD, 2015, Part VII, pp. 26–27).

The Code of Corporate Governance for GOCCs casts a comprehensive policy framework for the rights and duties of the board of directors, with the broad "fit and proper rule" as a salient tool for directors of GOCCs (GCG, 2012c, pp. 9–10, Section 13). The rule "refers to a set of standards for determining whether a member of the Board of Directors/Trustees or the CEO is qualified to hold a position in a GOCC which shall include, but not be limited to, standards on integrity, experience, education, training and competence" (GCG, 2012c, pp. 1–5, Section 1). It is also notable that the required board committees of GOCCs are comparable to those being recommended by the Philippine Securities and Exchange Commission (SEC) for publicly listed companies (Iu & Batten, 2001)[7]. These committees are the executive, audit, governance, nomination, remuneration, and risk management committees (GCG, 2012c, pp. 13–16, Section 16).

Directors' rights and duties as major policy considerations in GOCC governance are in place. The Code and Manual present evidence of convergence here.

Equitable treatment of shareholders and other investors

There is little to say about this SOE Guideline in the Philippines in relation to the GOCCs' minority shareholders because there are only four GOCCs with minority shareholdings. These minority shareholders are private entities "operating in the non-banking institutions, energy, and utilities sector: i) Credit Information Corporation (CIC); ii) PNOC Exploration Corporation; iii) PEA Tollway Corporation; iv) Philippine National Construction Corporation. The other GOCCs are 100% owned by the Philippine National Government directly or through its instrumentalities" (OECD, 2016, p. 24). Convergence in this aspect is not evident but perhaps may be a reflection of the narrow opportunity for application of this recommendation in the GOCC sector.

Identifying a widely-accepted model of corporate governance is the bedrock for an argument in favour of convergence, a process where a domestic legal regime starts to change and begins to look more like another system, in this case, an internationally endorsed set of standards that are responsive to the compelling pressures on the GOCCs identified in the preceding sections. The Philippines' GOCC Governance Act of 2011 changed the course of domestic policy marking where government-corporate ownership and governance are the primary concerns. A significant reform was the creation of a co-ordinating agency, with dominant features in the aspect of exercising state ownership and fostering good government corporate governance. The Manual and Code, both statutorily issued by the GCG, contain the bulk of the policies that correspond to the recommendations of the SOE Guidelines. On whether these organic documents fuel the motion towards convergence, it is here argued that the quality of the intersection of the present domestic legal system with the standards recommended by the OECD shows a high degree of convergence.

Our analysis of law indicates that the policies initiated by the Code and Manual began to mirror the functional components of OECD's six of seven SOE Guidelines, namely: 1) rationales for state ownership, 2) the state's role as an owner, 3) state-owned enterprises in the marketplace, 4) stakeholder relations and responsible business, 5) disclosure and transparency and 6) the responsibilities of the boards of state-owned enterprises. The GOCC Governance Act of 2011, implemented through the code and manual, demonstrates strong features of convergence with the SOE Guidelines.

4.2.2. Recent additional evidence: Dominant co-ordinating agency

In a 2016 report on SOEs in Asia, the OECD recommended a "co-ordinating agency model" (OECD, 2016, p. 26). According to this report, a state adheres to a co-ordinating agency model if a "specialised government unit acts in an advisory capacity to shareholding ministries on technical and operational issues, with SOE performance monitoring frequently being its most important mandate" (OECD, 2016, p. 26). The Philippines' GOCC Governance Act of 2011, a response to massive corruption among GOCCs (GCG, 2012a, pp. 7–10) established a co-ordinating agency that created a single body for the national ownership of GOCCs (OECD, 2016, pp. 25–26). This ownership is administered through the Governance Commission for GOCCs — GCG (GCG, 2012b, pp. 16–17, Article 17).

[7] Iu and Batten (2001) describe it as follows: "A legal transplant is essentially the process of transferring a system of law that was developed in one country to another" (p. 52).

In addition to its advisory authority, the GCG also acts as a "central … monitoring, and oversight body with authority — to formulate, implement and coordinate policies" of GOCCs (Republic Act No. 10149, Section 5). These powers provide the corporate governance framework of GOCCs and provide evidence of movement towards convergence. Delving deeper into the substantive content of the subordinate regulation, the Manual and Code, both mandated by GCG, contain the bulk of the policies where, as discussed above, detailed evidence of convergence can be found.

4.3. Whether convergence is a good thing

Corporations are useful, ubiquitous vehicles for the production and distribution of goods and services, and this creates a significant incentive for researching comparative corporate governance. Where particular models seem to be succeeding while others appear to be less successful or failing, "convergence" becomes a core question (Clarke, 2011, p. 96). Convergence toward successful models is something encouraged, while convergence toward failing models is to be avoided. As the 1987 Philippine Constitution puts it, GOCCs are to be governed, "in the interest of the common good and subject to the test of economic viability." Accordingly, not only does convergence have a special place within academic and policy circles as parties pursue a vision of an improved national economy, but it also has a social, non-economic rationale.

For the Philippine GOCCs, convergence consists of pursuing domestic reforms, transplanting good practices, and making sense of international standards in functional terms. Convergence, however, is not a single phenomenon. Rather, it encompasses a range of issues and changes in policies, structures, and practices. In the convergence literature, a number of issues arise before one is able to evaluate changes whether toward convergence or divergence. We address these briefly next.

4.3.1. What are convergence and the variety in domestic reforms?

In the first instance, the goal of convergence in the context of the SOE Guidelines is distinct from the concept of "uniformity" (Clarke, 2011, p. 103). Convergence on a norm, structure, or process among OECD members does not necessarily reflect the perspectives or interests of non-member emerging economies in the discussions led by the OECD. In this sense, the whole discussion about "global convergence" (Branson, 2001) is misguided and issues about economic development and stability might be better addressed by raising more relevant questions. For example, it might be better to ask: Has awareness been raised of the importance of sound good corporate governance? Have current SOE corporate governance frameworks been evaluated against international best practices contained in the SOE Guidelines as modified for the developmental, regional, or national context? Have policy makers been persuaded and influenced by their OECD peers? Are there viable support mechanisms and effective reforms in current SOE corporate governance policies, structures, and procedures? (OECD, 2016, p. 9)

Clarke (2011) argues that the persistence of divergence is to be expected and indeed appropriate. Clarke argues that "selection pressures" pushing firms to converge all to a single model of corporate governance is inadequate in terms of addressing the needs of the different organisations and institutions and their distinct legal and economic, social, and political contexts (pp. 99–100). This reasoning in favour of the persistence of divergence resonates well and provides good justification for a lack of pursuit of convergence by developing states. Clarke (2011) concludes, "If policy advocacy has any real-world effect, then one should advocate what it seems to work well, regardless of what direction the rest of the world is going" (p. 103). A statement that is reflective of smart, selective cross-border respect where states accept and transform a host of international practices, but only those relevant to the state, into legally binding national instruments. Where this has occurred, the OECD has provided an international platform for "interaction" among several "transnational actors", where they can "interpret" good corporate governance norms, bring these norms with a high level of international legitimacy, and use them with the end goal of integrating them into the national legal systems (Koh, 1997, p. 2602). So defined, it can be argued that this is a step "towards convergence" and that it benefits this emerging part of the globe — developing South-East Asia.

Implementing a variety of domestic reforms after learning about international perspectives and regional experiences allows selective convergence, and such convergence is a good thing to the extent that it supports improved governance and ultimately, public good objectives.

4.3.2. Transplanting and recognition of failed alternatives

In the early 1990s, American scholars helped shape the initial terrain of comparative corporate governance because of their interest in adopting the governance mechanisms of other successful business ecosystems, particularly those of Japan and Germany (Pinto, 2005, p. 483). The globalization debate of that era drew the attention of corporate law experts who queried the United States as a model of limited economic success (Hill, 2005). Comparative corporate governance, however, changed its track in the late 1990s (Hill, 2005). It shifted from the Japanese and German models where economies were struggling and moved towards "transplanting" the United States-style of corporate governance to the rest of the world (Hill, 2005). International organizations, like the OECD, developed model corporate governance codes, which are purportedly for "ready international transplantation" (Hill, 2005).

As could be expected the promotion of "transplanting" corporate governance principles, the "American style" specifically, received considerable opposition from strong economies in Asia (Puchniak, 2014, pp. 12–20). Among comparative law scholars, institutional economists, and others, the difficulty of transplanting and implementing model corporate governance codes from elsewhere was obviously riddled with problems. As some authors argued, "laws evolve out of an organic

process … [and form] the 'rule of non-transferability of law', which contends that effective legal transplants are unattainable, as the development of law should be evolutionary in nature" (Iu & Batten, 2001, p. 52). In other words, neither diverse jurisdictions nor the academy accepted simple transplant models as desirable or doable.

Particularly appropriate to the Philippine context is whether the path of the Philippine corporate legal system with its colonial roots and changing hues as presidencies transition from one to another since the 1940s could simply import or transplant a foreign model even if it wanted to. GCG must look back to the multiple failed government-initiated corporate governance reforms in the Philippines and recognize that adopting internationally accepted policies, structures and practices can only be a slow, long-term project. While moving "towards convergence" may be an inevitable part of the Philippine legal development, what that precisely means remains to be clarified. Any adoption must be done with cautious attention to the organically developed institutions of the Philippines.

Taking a particular direction is a policy choice and moving toward a clearly superior model is an improvement over an unpleasant status quo. Convergence may be a long and arduous process; however, the push to find a fitting model corporate governance code elsewhere and import its best elements is a good thing.

4.3.3. Functional perspectives

Some scholars have suggested that convergence occurs by engaging in the wholesale replacement of the corporate governance aspects of some Asian legal systems and transplanting in the OECD Guidelines. Such a model of convergence is predicated on a functional theory of comparative law. Essentially, this view is that "country-level" and "rule-based" comparisons answer the query: *"Does a particular domestic rule of corporate law also exist in another country?"* (Siems, 2015, p. 5). There is no consensus in the scholarship that this can be done.

Yet, at a foundational level the SOE Guidelines, are both the product of inter-state dialogues and supported by the on-going dialogue in the region at events hosted by the Asia Network on Corporate Governance of State-Owned Enterprises. These meetings support informed interpretation of corporate governance issues shared across the region and help to shape agreed-upon solutions. The international discussions of common principles on this matter are made possible by commonalities in the core doctrines of a corporation and workable theories of corporate governance that cut across different legal systems (Sheehy, 2005, pp. 225–226). On specific domestic rules, however, the SOE Guidelines are set on a theme that is more responsive to the question: "*How is a particular corporate problem addressed in particular countries?"* (Siems, 2015, p. 5). This is indicative of a "functional comparison" in the realm of comparative corporate law, where "the initial research question should not just refer to the law of one legal system but should be posed in the functional term" (Siems, 2015, p. 8).

Functional themes abound in the SOE Guidelines because they "organize the discussion around the ways in which corporate laws respond to [corporate governance] problems" (Siems, 2015, pp. 9–10). The OECD's work can be traced to the normative discourses involving the shareholder versus stakeholder debate and the persisting query *"For whose benefit the corporation should be run?"*. Issues that can be dissected through the lenses of ownership structure, principal-agent problem, and information asymmetry likewise form the conceptual framework of the OECD recommendations for the governance of COGG. The Philippines can and does join the international dialogue hosted by Asia Network on Corporate Governance of State-Owned Enterprises, and it is able to do so without either impugning the corporate laws of other jurisdictions and while still deriving benefit from the collective output of the dialogue.

One of the strong features of the SOE Guidelines is that it speaks to the policy makers, those of the developing economies especially. Its capacity to seed reforms at the domestic level "depends on how such rules may have an appeal across countries, industries and firms" (Siems, 2015, p. 23.). The legitimizing effect of the "interaction" and "interpretation" process of the participating sovereigns arguably contributed to the attractiveness of the Guidelines and the opening of a window for their convergence through "internalization" (Koh, 1997, p. 2602).

Convergence towards codes of good or recommended governance practices is a good thing, especially so, that as a body of "soft law," their utility in international law or relations can be stated as follows: "Self-regulation, peer pressure from within the national or international director fraternity, and a stronger, more universal sense of what business ethics require may have the potential to become strong determinants of director and executive behavior" (Branson, 2000, p. 670). In sum, convergence toward desirable behaviour by way of coercive, mimetic, and normative isomorphism is a good thing.

5. CONCLUSION

Like publicly listed corporations, SOEs deserve serious attention in the field of comparative corporate governance. This article has shown that the widely accepted corporate law principles and theories have a limited place in the discussion of governance of state-owned enterprises and that the sector poses even more challenging concerns because of the multiplicity of constituents, objectives, and pressures on them and fundamentally, from a corporate governance perspective, because of the state's role as an owner.

This article examined the Philippine context where a significant SOE economy exists. It answered three important questions put by Clarke: could there be convergence, is there convergence, and is convergence a good thing. Using three discrete methods, we answered the first using a lens of institutional isomorphism, where we found various mechanisms at play in the convergence towards the SOE Guidelines. The second question we answered through a doctrinal analysis of one piece of legislation and two regulatory instruments, a manual and a code which we compared against the SOE Guidelines. Our analysis of the instruments

found significant evidence of the adoption of the SOE Guidelines. The third question evaluating the effects of convergence, we answered using economic and colonial theories. We considered that the benefits to the Philippines' public good outweighed the drawbacks brought about by vestiges of colonialism. Further, we considered that the means by which convergence was occurring, a series of high-level dialogues, was open and sufficiently non-prescriptive to allow selective adoption rather than blunt transplantation.

This article contributes to understanding how the law operates in Asia. Specifically, it investigates and provides evidence of Asian adoption and adaptation of law generated in the transnational context. Further, it provides an important first study into the phenomenon of convergence — either in private companies or SOEs — in the Philippines. This pioneering study provides policy makers at all levels with insights into how this particular emerging economy has addressed corporate governance reform as an important foundation of broader economic reform. We note that our study is limited in different ways. It is not necessarily generalisable as it is focused purely on the Philippines. Further, our study is limited in that it lacks empirical research verification. Such empirical work would be valuable and could be done, for example, by examining the finances of the GOCCs and measuring the social impacts of GOCCs, particularly in relation to expenditure. Such extensions of this work would be worthy contributions to future researchers.

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