



STATEMENT OF THE REPUBLIC OF THE PHILIPPINES

delivered by
MARIA ANGELA A. PONCE
Minister and Legal Adviser
Permanent Mission of the Republic of the Philippines to the United Nations

**Item 79: Report of the International Law Commission on the work of
Its seventy-first session (Cluster I: Chapters I, II, III, IV, V and XI)
Sixth Committee**

74th Session of the United Nations General Assembly

31 October 2019, Trusteeship Council Chamber
UN Headquarters New York

The Philippines thanks the International Law Commission through its Chair, Mr. Pavel Sturma, for its succinct but comprehensive report on the work of its seventy-first session. We laud the Commission's efforts to promote, encourage and advance the rule of law through the progressive development of international law and its codification.

We commend Special Rapporteurs Mr. Sean Murphy, Mr. Dire D. Tladi and Mr. Juan Manuel Gomez Robledo for their work, respectively, on "Crimes against humanity", "Peremptory norms of general international law (*jus cogens*)," and "Provisional application of treaties."

On **Chapter IV, "Crimes against humanity"**, we consider the draft articles as an important contribution to the international community's collective efforts to deter and curtail atrocity crimes. The Philippines affirms its commitment to fight against impunity for atrocity crimes, notwithstanding our withdrawal from the Rome Statute, especially since the Philippines has had, for 10 years now, national legislation punishing atrocity crimes. Indeed, we are celebrating this year the 10th anniversary of the Philippine Act on Crimes against International Humanitarian Law, Genocide and Other Crimes Against Humanity.

This law declares that "the most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, it

being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.” It criminalizes, at a national level, crimes against humanity, a primary obligation called for in the draft articles.

While we understand the enthusiasm of certain delegations and of the Commission to proceed immediately to the negotiation of a convention based on the draft articles, citing among others the opportunity to make history given that the last time that a convention resulted from the ILC’s work was 15 years ago, we are of the view that further consideration by States on the draft articles and commentaries is still needed at this stage. This is a process that, as other delegations have said, cannot proceed in haste.

We share the United States’ concern that the draft articles need to be flexible in implementation, account for a diversity of national systems, parties to the Rome Statute and States that are not parties to the Rome Statute; as well as the concern on overbroad assertions of jurisdiction by national and international courts.

With regard to **Chapter V on “Peremptory norms of general international law (jus cogens)”**, the Philippines welcomes the opportunity to submit, in 2020, comments and observations on the 23 draft conclusions, draft annex and commentaries.

Preliminarily, Paragraph 2 of Conclusion 7 which states that “[a]cceptance and recognition by a very large majority of States is required for the identification of a norm as a peremptory norm of general international law (*jus cogens*)” appears inconsistent with the definition under Conclusion 2 -- taken from Article 53 of the Vienna Convention on the Law of Treaties -- which provides that “[a] peremptory norm of general international law (*jus cogens*) is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”

The Commentary on this Paragraph stresses that “[d]etermining whether there was a very large majority of States accepting and recognizing the peremptory status of a norm was not, however, a mechanical exercise in which the number of States is to be counted. The acceptance and recognition by the international community of States as a whole requires that the acceptance and recognition be across regions, legal systems and cultures.” The use of “a very large majority of states” as the benchmark does not reflect this idea as the emphasis seems to shift to a numerical standard, and does not reflect the idea that the acceptance and recognition must be across regions, legal systems and cultures.” We will continue to reflect on this.

We are still considering the value of having a non-exhaustive list of peremptory norms of international law, especially as the commentaries specify that “there has been no attempt to define the scope, content or application of the norms identified.”

On **Chapter XI on “Other decisions and conclusions of the Commission**, the Philippines considers the revised draft model clauses complementary to the Guide to Provisional Application of Treaties, clarifying issues and providing guidance to states that wish to resort to provisional application of treaty under Article 25 of the Vienna Convention on the Law of Treaties. We do not view the model clauses as promoting or encouraging resort to provisional application, but rather as a tool to assist states should they decide, and if conditions permit them, to resort to provisional application of a treaty. We will submit further comments on this in advance of the commencement of the second reading of the draft Guide to Provisional Application of Treaties at the seventy-second session of the Commission.

On the Commission’s Long-Term Programme of Work, we are inclined to support the topic "prevention and repression of piracy and armed robbery at sea", with the consideration that the direction taken must be in line and consistent with the UN Convention on the Law of the Sea and should take into account regional arrangements and practices.

We supported and now welcome the inclusion of the topic “Sea-level rise in relation to international law” and the establishment of an open-ended Study Group on this.

Finally, we express our continuing support for the International Law Seminar, from which many of our diplomats - such as myself - lawyers and members of the academe have benefitted. We suggest however, that more widespread and extensive outreach be conducted for the Conference of the International Law Seminar Alumni Network to ensure awareness by alumni and wider participation.

Thank you.