



PHILIPPINES

STATEMENT

Permanent Mission of the Republic of the Philippines to the United Nations
Agenda Item - 82: Report of the International Law Commission
on the work of its seventy-second session

Cluster II – Immunity of state officials from foreign criminal jurisdiction (Chapter VI) and Sea-level rise in relation to international law (Chapter IX)

Sixth Committee

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Madam Chair,

The Philippines commends Special Rapporteur Ms. Concepción Escobar Hernández and Co-Chairs Mr. Bogdan Aurescu and Ms. Nilufer Oral for their contribution to the work of the ILC, respectively, on Immunity of state officials from foreign criminal jurisdiction (Chapter VI) and Sea-level rise in relation to international law (Chapter IX).

We wish to share the following general observations:

On “Immunity of state officials from foreign criminal jurisdiction”

The Special Rapporteur has submitted to the Commission the eighth report on the topic which, *inter alia*, examined the relationship between the immunity of State officials from foreign criminal jurisdiction and international criminal tribunals; considered a mechanism for the settlement of disputes between the forum State and the State of the official; considered the issue of good practices that could help to solve the problems that arise in practice in the process of determining and applying immunity; and presented proposals for draft articles 17 and 18; and progress in terms of adoption of draft articles 8 ante, 9, 10, 11, and 12.

While noting the progress in the work on this topic, we reiterate our view that the question of immunity of State officials from foreign criminal jurisdiction must be approached from the perspective of respect for the sovereign equality of States and protection of State officials from politically motivated or abusive exercise of criminal jurisdiction, balanced against the recognized need to combat impunity for international crimes.

On “Sea-level rise in relation to international law”

The Philippines notes the Commission has reconstituted the Study Group on sea-level rise in relation to international law and has considered the first issues paper developed by the Co-Chairs, including through a “plenary-like” debate.

As an archipelagic state with numerous low-lying coastal areas and communities, highly vulnerable to sea-level rise and its effects, including its possible impacts on maritime rights and entitlements, we welcome the progress in the work of the Commission on sea-level rise. We support the Commission’s premise that sea-level rise is a factual reality and is scientifically proven. Steady progress on the consideration of this issue by the Commission, especially as it relates to the United Nations Convention on the Law of the Sea (UNCLOS), statehood, and protection of persons affected by sea-level rise, is urgent and necessary.

On the work of Co-Chairs, indicated in the first issues paper on the possible legal effects of sea-level rise on the baselines and outer limits of the maritime spaces that are measured from the baselines, and the analysis of the ambulation of baselines as a result of sea-level rise, we note Co-Chair Oral’s careful consideration of: (1) the potential legal consequences of the landward shift of a newly drawn baseline due to sea-level rise; (2) the impact of sea-level rise on the legal status of islands, rocks and low-tide elevations; and (3) the potential consequences on the rights of the coastal State and third party States.

The Co-Chair highlighted the case of an archipelagic State whose existing archipelagic baselines could be impacted by the inundation of small islands or drying reefs, which could lead to potential archipelagic baselines status. We also note the discussion on the status of islands and rocks under Article 121 of UNCLOS, and the consequences of reclassification as a rock due to sea-level rise, including as a rock that “cannot sustain human habitation or economic life of their own”. While recognizing significant work done by the Study Group, these questions need further consideration by States. After all, what determines status is natural state. But anthropogenic climate change is not a natural process and is not a natural state.

The Philippines would caution against inference in favor of ambulatory baselines, absent a showing of state practice and *opinion juris* on the matter. In terms of constitutional practice on baselines and maritime borders, the baselines of the Philippines archipelago are clearly defined and described under law. This law affirms that the Republic of the Philippines has dominion, sovereignty and jurisdiction over all portions of the national territory as defined in the Constitution and by provisions of applicable laws.

While noting that the Commission is an independent subsidiary body of the General Assembly, we wish to reiterate our view on the universal and unified character of UNCLOS. The UNCLOS comprehensively allocates rights to maritime areas. The UNCLOS represents a delicate balance of the rights and obligations of all State Parties and we would caution against any interpretation that would undermine it.

In general, proceeding on the basis of legal stability, security, certainty, and predictability in international law is a welcome approach.

Co-Chair Cisse's approach in the application of principles of public international law which could favor permanent maritime boundaries, including the principle of immutability of borders from the colonial era, in accordance with the principle of *uti possidetis juris* has value in this regard. An analogous principle could be considered in favor of permanent baselines. So is the recourse to the limitation on the application of the principle of *rebus sic stantibus* under the Vienna Convention on the Law of Treaties, with the consequence that boundary treaties could not be affected by fundamental change of circumstances.

It is important that while the Study Group focus on state practice, it should seriously consider the submissions of affected States in contributing to the Commission's work on the progressive development of international law. Ecological equity as a principle is key: no state should suffer disproportionately from effects of climate change affecting all.

Given the technical and scientific nature of the phenomena, we also deem the continuing inputs of technical experts and scientists as necessary.

As this is a work in progress, we intend to revisit these observations in relation to the Commission's consideration of sea-level rise and other fields of international law. We look forward to further reports from the Commission on the progress of the Co-Chairs and the work of the Study Group. END