



PHILIPPINES

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STATEMENT

Permanent Mission of the Republic of the Philippines to the United Nations

Agenda Item 77: Report of the International Law Commission on the work of its seventy-second session

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

28 October 2022

77th Session of the United Nations General Assembly

Mr. Chair,

The Philippines commends Special Rapporteur Ms. Concepción Escobar Hernández and Co-Chairs Ms. Patricia Galvao Teles and Mr. Juan Jose Ruda Santolaria for their contribution to the work of the ILC, respectively, on Immunity of state officials from foreign criminal jurisdiction and Sea-level rise in relation to international law.

We wish to share the following general observations:

On “Immunity of state officials from foreign criminal jurisdiction”

The Philippines notes the transmission of the 18 draft articles and draft annex on “Immunity of state officials from foreign criminal jurisdiction” following the first reading.

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 address impunity for international crimes.

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

As an archipelagic state with numerous low-lying coastal areas, highly vulnerable to sea-level rise and its effects, we follow closely the work of the Commission on sea-level rise in relation to international law. Continued progress on the consideration of this issue by the Commission, especially as it relates to statehood and protection of persons affected by sea-level rise, is necessary. Hence, we welcome the reconstitution of the Study Group on sea-level rise in relation to international law and their exchange of views on the second issues paper developed by the Co-Chairs.

We understand that the paper is exploratory in nature and aims to establish a list of

international law issues to be analyzed from both *lex lata* and *lex ferenda* perspectives. We acknowledge the existential implications of the questions raised by the Co-Chairs, such as the possibility that the land area of the State could be completely covered by the sea or rendered uninhabitable; the progressive displacement of persons to the territories of other States, and the implications on nationality, diplomatic protection and refugee status; the legal status of the Government of a State affected by sea-level rise that had taken residence in the territory of another State; the preservation of the rights of States affected by the sea-level rise in respect of the maritime areas; and the right to self-determination of the populations of affected States.

The Philippines is of the view that these questions must be approached on the basis of legal stability, security, certainty, and predictability in international law. We note the Commission's debate on the sources of law, and highlight that the Commission should take into account treaties, customs, and applicable general principles of law, including principles of equity, good faith, and international cooperation. We endorse the principle of common but differentiated responsibilities in relation to statehood and sea-level rise. The United Nations Convention on the Law of the Sea is the legal framework within which all activities in the oceans and seas must be carried out.

On statehood, the Co-Chair's starting point, the criteria for the creation of a State, or rather the criteria in accordance with the *1933 Convention on the Rights and Duties of States* that a State has to meet to be considered a subject of international law, is appropriate. It has been said that statehood is a central concept of international law but it is one of 'open texture'. While we would support the maintenance of current legal state, international law has a tendency to grow around new realities. Hence, the doctrine that statehood once established would subsist may have to be reconciled with state of fact in which one essential element of statehood is no longer present. The criteria would have to be liberally construed altogether. For instance, Professor James Crawford, with regard to territory, has said that requirement of territory is rather a constituent of government and independence than a distinct criterion of its own.

When one of elements of statehood is missing, *ie*, that the land area or the territory of the state has been completely submerged, our view is to pragmatically approach this in favor of stability and predictability in international law, mindful of specific circumstances. The Co-Chair's framing of the alternatives, *ie.*, (1) presumption of continuity of statehood, applying the Convention on the Rights and Duties of States to its continued existence, while acknowledging practical problems arising therefrom; or (2) maintenance of some form of international legal personality without a territory, similar to the historical examples mentioned, in relation to various modalities, is consistent with this approach.

Mr. Chair,

The Co-Chair's preliminary observation on the "Protection of persons affected by sea-level rise", specifically that existing international legal frameworks potentially applicable to the protection of persons affected by sea-level rise are fragmented and general in nature, as well as the suggestion to consider further development of these frameworks to address the needs of affected persons, are on point. We endorse the proposal that the existing framework could be complemented to address the long-term consequences of sea-level rise and to take account of the fact that the affected persons could remain *in situ*, be displaced within their own territory, or migrate to another State. On the last point, the Philippines has experience with regard to

regulatory frameworks in international migration and would be interested to contribute in this regard.

The Global Compact for Safe, Orderly, and Regular Migration, for example, in relation to the objective of minimizing adverse drivers that compel people to leave their country of origin, commits states to develop adaptation and resilience strategies to, among others, slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, drought and sea level rise, taking into account the potential implications on migration, while recognizing that adaptation in the country of origin is a priority. It also calls for the development of coherent approaches to address the challenge of migration movements in the context of slow-onset natural disasters, including by consideration relevant recommendations from State-led processes, such as, *inter alia*, the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, and the Platform on Disaster Displacement.

We share the Co-Chair's assessment that while relevant State practice at the global level is sparse, it is more developed among States already affected by sea-level rise. In this regard, we wish to flag that states in the Southeast Asian region are also highly vulnerable to climate change impacts.

The 2022 Joint Vision Statement at the ASEAN-US Summit, for instance, acknowledges this, and contains a clear commitment to intensify partnership to bolster ASEAN's capacity to enhance disaster resiliency and adapt to the effects of climate change, including rising sea levels.

Based on the *2021 ASEAN State of Climate Change Report*, six ASEAN countries, including the Philippines, are vulnerable to sea-level rise. The report indicates the wide-ranging consequences of sea-level rise in some ASEAN countries, including on freshwater aquifers in coastal areas due to sea water intrusion affecting coastal ecosystems, agriculture production and drinking water supply; increased risk of flooding, affecting coastal areas and communities when coupled with extreme rainfall; and effect on people's livelihoods. Protection of affected persons *in situ* or internally displaced would be of particular interest.

While noting that the Commission's focus on the legal aspects of the topic, in accordance with its mandate to progressively develop and codify international law, policies and related instruments of individual states of affected regions, and of regional organizations, must be taken into consideration in identifying emerging State practice.

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 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.
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