STATEMENT OF THE PHILIPPINES

Item 83 – Report of the International Law Commission on the work of its 47th session (Part 1)
Sixth Committee, 70th session of the United Nations General Assembly
Tuesday, 03 November 2015

Thank you, Mr Chairman.

The Philippines can hardly imagine the state of the multilateral treaty process today without the International Law Commission. We have always underlined the ILC's essential work in promoting and advancing the rule of law through the progressive development of international law and its codification, pursuant to Article 13 of the Charter of the United Nations.

In this vein, we thank the chairman of the ILC, Mr Narinder Singh, for his concise introduction of the ILC's report yesterday. We also congratulate the Study Group on the "Most-Favoured-Nation clause", led by its chairman, Mr Donald M. McRae, for the completion of their work on this subject, as well as thank the Special Rapporteur on the topic of "Protection of the atmosphere", Mr Shinya Murase.

Mr Chairman, MFN clauses accord a contracting party treatment not less favorable than that which has been or may be granted to the "most favored nation" among other countries. They establish the principle of equality of international treatment by providing that the citizens or subjects of the contracting nations may enjoy the privileges accorded by either party to those of the most favored nation. Under the regime of the World Trade Organization, exceptions to MFN are the preferential treatment of developing countries, regional free trade areas and customs unions.

During the last 25 years, the Philippines has pursued preferential and multilateral trading commitments to benefit from trade liberalization, alleviate poverty and raise standards of living. MFN treatment has been a key tool to achieve those objectives.

The 1978 draft articles on the MFN clause, while still helpful, have been overtaken by developments. We concur with the ILC that the very scope of MFN clauses has been the key interpretative issue. The very benefit that can be given and taken depends on the interpretation of the MFN provision itself. If the parties do not agree or fail to use clear and explicit language, MFN clauses in bilateral investment treaties could extend from substantive obligations to procedural protections or dispute settlement provisions. This is the essence of the controversial *Maffezini* case. Or it may also be argued otherwise. But this notion that the treatment of investment and/or investors could encompass dispute settlement has raised the stakes, and litigious investment lawyers would only be too happy because of the MFN clause. Under *Maffezini*, matters not appearing to be the specific will of the parties may come alive through the MFN clauses, if more favorable provisions in other investment treaties may be found.

We thank the study group for highlighting the role of the Vienna Convention on the Law of Treaties in helping us interpret these treaties. The conclusions of their final report will certainly assist our authorities in better and more clearly negotiating bilateral investment treaties and tax treaties, among others, to hopefully avoid future problems.

Mr Chairman, we now turn to the topic of "Protection of the atmosphere".

The Philippines appreciates the study and negotiation of rules that are rooted in science. This is the essence of the draft guidelines. We thank the ILC for engaging the scientific community on this topic.

The atmosphere is our single biggest and one of our most important natural resources. It is a shared, common and possibly finite resource, therefore, it is our common concern. We have a general obligation to protect it from human activity, in other words, atmospheric pollution and atmospheric degradation. We have an obligation to cooperate in that protection, beyond enhancing scientific knowledge and the exchange of information and joint monitoring.

Scientific evidence says "with 95 percent certainty that human activity is the dominant cause of observed warming since the mid-20th century", quoting from the last paragraph of page 32 of the ILC report.

The Philippines is generally agreeable to the text of the draft guidelines, together with the preambular paragraphs. We also agree that draft guideline 3 belongs to the preamble.

On draft guideline 2, paragraph 1, our interpretation is that the brackets give us a choice between an exclusive ("deal with") or non-exclusive ("relating to") scope. We have no particular preference at this stage, but would request an explanation of the implications of either option.

On draft guideline 2, paragraph 2, we would like to be clarified on the logic behind the double negative "do not deal with" followed by "but without prejudice to". How would the meaning change if we used "and" instead of "but"?

We look forward to working with the ILC on this topic in the next four years.

Mr Chairman, the Philippines supports the proposal for the ILC to hold part of its future sessions here in New York. This is not a new idea, as we recall previous occasions when the ILC held its sessions other than in Geneva. We believe that both the ILC and the New York Missions would mutually benefit from this proposal.

Finally, we share in the ILC's disappointment in the curtailment of the Codification Division's desktop publishing initiative. What value is the work of the ILC, and the work of the UN on the Rule of Law for that matter, if that work is not disseminated to a wider readership in a timely manner? We therefore support the ILC's request that the Codification Division continue to provide it with legal publications.

Thank you, Mr Chairman.