

STATEMENT OF THE PHILIPPINES

Item 80 – Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm

Sixth Committee, 71st session of the United Nations General Assembly

Thursday, 20 October 2016

Thank you, Mr Chairman.

Let me begin by thanking the Secretariat for compiling both the comments and practice of Member States and the decisions of international courts and tribunals concerning this subject matter.

The Philippines wishes to reiterate its appreciation for this very valuable work of the International Law Commission on international liability for injurious consequences arising out of acts not prohibited by international law – first, the 19 draft articles of 2001 that seek to establish a system of liability for transboundary harm from hazardous activities, and second, the eight principles of 2006 that seek to establish a compensation system for any loss which may be occasioned by that harm.

Having said that, the Philippines agrees with other delegations that it may be premature to negotiate an international instrument on the draft articles, let alone the principles.

While it is debatable that some parts of the 2001 draft articles codify customary international law, for the greater part, they represent progressive development of international law. On the other hand, the 2006 principles are “general and residuary”, which the ILC itself calls a “non-binding declaration”. The principles cannot be said yet to reflect customary international law, but rather, an exercise in progressive development. However, the principles remain useful standards for the conduct of states

The report of the Secretary-General identified four relevant cases in the last three years, but none of the decisions referred to the articles or principles directly.

In the absence of specific rules of conventional or customary international law imposing liability and allocating loss for transboundary harm arising out of hazardous activities, states have the general duty to observe due diligence in order to prevent or minimize transboundary harm.

In the meantime, it is imperative to enhance the level of international cooperation to build the scientific and technical capacities particularly of developing countries, given the varying levels of socioeconomic development among them, in order to help them prevent transboundary harm arising from hazardous activities. Without that, a global convention envisioned by the draft articles and principles for the future would not be viable.

Thank you, Mr Chairman.