



# PHILIPPINES

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## STATEMENT

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

### **Agenda Item 79: Report of the International Law Commission on the work of its seventy-fourth session**

Cluster II – Chapter V Settlement of Disputes to which international organizations are parties  
and Chapter VI Prevention and repression of piracy and armed robbery at sea  
31 October 2023

78th Session of the United Nations General Assembly

**Mr. Chair,**

The Philippines commends the International Law Commission (ILC) for its work at the 73<sup>rd</sup> and 74<sup>th</sup> sessions and thanks the Co-Chairs for their substantive presentation to the Sixth Committee.

We wish to share the following general observations on the chapters on Chapter V Settlement of Disputes to which international organizations are parties and Chapter VI Prevention and repression of piracy and armed robbery at sea.

### **On Settlement of Disputes to which international organizations are parties**

We thank Mr. August Reinisch, the Special Rapporteur, for the analysis of the subject matter of the topic as well as the work on definitional issues.

We note that the Commission decided that a set of draft guidelines is the most suitable form for the Commission's output, which is intended to direct States, international organizations and other users to answers that are consistent with existing rules or that seem most appropriate for contemporary practice.

We further note that the guidelines are mainly concerned with the availability and adequacy of means of dispute settlement for international parties, and not intended to elaborate procedural rules.

We agree that a sharp distinction between international disputes and non-international ones is often not feasible. Thus, we also support the non-inclusion of the world "international" before disputes to ensure that disputes of a "private law character" and any disputes that may be qualified as "non-international" fall within the scope of the draft guidelines. Our experience is that most of the disputes involving international organizations fall within the private law character.

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We also support the explicit inclusion of the phrase “at least one organ capable of expressing a will distinct from that of its members” which emphasizes the that an international organization must have at least one organ with a will of its own, noting the relation with the concept of an organization’s “international legal personality.”

In cases before the Supreme Court of the Philippines, ie. *International Catholic Immigration Commission v. Calleja*, G.R. No. 85750 September 28, 1990; *DFA v. NLRC*, G.R. No. 113191 September 18, 1996, both Court decisions acknowledge an international organization’s international legal personality.

We look forward to the future work of the Commission on this topic.

### **On Prevention and repression of piracy and armed robbery at sea**

We thank Mr. Yacouba Cissé, the Special Rapporteur, for the work on this topic. The Philippines has made a submission on our views on this topic, providing relevant information on our criminal laws that punish piracy and armed robbery at sea.

Piracy is punished under the Revised Penal Code<sup>8</sup> (RPC) and under Presidential Decree No. 532 (P.D. 32), otherwise known as the Piracy and Highway Robbery Act of 1974. While P.D. 532 punishes piracy committed within Philippine waters, the RPC as amended by Republic Act No. 7659 covers acts done in the high seas.

A distinction between the two national laws punishing piracy is that, in PD 532, the perpetrator may be a member of the vessel’s complement or a passenger, while under the RPC the perpetrator is a complete stranger. The intention of perpetrators is immaterial, meaning, the acts may be committed in furtherance of private or political ends. Furthermore, the provision does not require the participation of two ships before it can be punishable before Philippine courts. Hence, the counterpiracy regime of the Philippines is even broader in scope and does not have the limitations indicated in UN Convention on the Law of the Sea.

Nevertheless, we support the Commission’s approach to preserve the integrity of the definition of piracy contained in article 101 of the UN Convention on the Law of the Sea.

Rather than an explicit reference to the exclusive economic zone, the Commission has decided to refer to Article 58, Paragraph 2, of the UNCLOS to indicate that piracy can also be committed in the exclusive economic zone. We note the careful drafting so as not to prejudice the position of non-parties to the UNCLOS. The two distinct paragraphs also recognize that the exclusive economic zone and the high seas are two separate maritime spaces where different rights and obligations apply.

We note the Commission’s view that certain elements of the definition of piracy contained in article 101 of the UNCLOS posed questions of interpretation and application, in view of the evolving nature of modern piracy. We suggest that the Commission proceed with caution, in this regard.

We look forward to the future work of the Commission on this topic.

**Mr. Chair,**

We intend to revisit these general observations in relation to the Commission's work. We look forward to further reports from the Commission. **END**