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-fifth session
Cluster II – Chapters IV (Settlement of disputes to which international organizations are parties) and V (Subsidiary means for the determination of rules of international law)
25 October 2024
79th Session of the United Nations General Assembly

Mr. Chair,

The Philippines commends and thanks, once again, the International Law Commission (ILC) for its work at the 75th session.

With respect to the Cluster II, we wish to share the following preliminary observations on the chapters on Chapters IV (Settlement of disputes to which international organizations are parties) and V (Subsidiary means for the determination of rules of international law).

On "Settlement of disputes to which international organizations are parties"

On "Settlement of disputes to which international organizations are parties", we thank Special Rapporteur August Reinisch for his second report on this topic addressing policy issues anchored in the rule of law as endorsed on the international level, in particular the three aspects of (1) access to dispute settlement; (2) adjudicatory independence and impartiality; and (3) due process or a fair trial.

With respect to the draft guidelines on the topic proposed by the Special Rapporteur, we wish to share the following views:

Draft Guideline 3

We welcome the scope of this part which addresses disputes between international organizations and between international organizations and States.

We echo the observation that disputes between International Organizations and States are more common, involving issues like headquarters-related disputes, privileges and immunities, membership withdrawals, organizational powers, or compliance with State obligations.

Indeed, while disputes under this part generally arise under international law, they can also arise

under domestic law.

In the Philippines, there have been cases involving labor rights and international organizations. However, in a case, the Supreme Court has held that Asian Development Bank has immunity from suit in at case based on the Charter and Headquarters Agreement, and thus cannot be sued. The filing of the petition by the foreign ministry affirms the government's own recognition of ADB's immunity. Also, the Court noted that the service contracts entered by the ADB were official acts over which a waiver of immunity would not attack.

Draft Guideline 4

We welcome Draft Guideline 4 which recommends using peaceful dispute settlement methods as listed in draft guideline 2, subparagraph (c), that includes methods from Article 33 of the Charter of the United Nations as reaffirmed by the Manila Declaration on the Peaceful Settlement of International Disputes on the understanding that it does not prioritize any specific method.

We agree with the Guideline's emphasis on the free choice of dispute settlement and the inclusion of language indicating that the means chosen should be "appropriate to the circumstances and the nature of the dispute." We also appreciate that this specific language is inspired by paragraph 5 of the Manila Declaration which refers to "such peaceful means as may be appropriate to the circumstances and the nature of their dispute".

In the same vein, we welcome the reflection in paragraph 5 of the Manila Declaration in the Guideline's call for disputes to be settled in good faith and cooperation, noting that these are essential for guiding dispute resolution efforts.

Draft Guideline 5

We note that Draft Guideline 5 addresses the accessibility of dispute settlement means, as distinguished from Guideline 4, which recommends using appropriate means for dispute resolution. While we agree with the recommendation for wider accessibility for all means of dispute settlement without prioritizing any particular means, we wonder whether this guideline is sufficient to address the issue, which include the limited access of international organizations to dispute settlement and the International Court of Justice, which has resulted in calls for broader access for the United Nations, its specialized agencies, and international organizations to the Court, including its contentious jurisdiction.

We look forward to the third report next year that on the practice of the settlement of non-international disputes to which international organizations were parties and the completion of the first reading of this topic.

Draft Guideline 6

On Draft Guideline 6, we welcome the use of obligatory language and the inclusion of core elements of the Rule of Law in Dispute Settlement, noting that independence and impartiality of adjudicators, along with due process, are core elements of the rule of law in dispute settlement.

On "Subsidiary means for the determination of rules of international law"

Turning now to “Subsidiary means for the determination of rules of international law.” we thank the Special Rapporteur Mr. Charles Chernor Jalloh for the second report addressing the work of the Commission on the topic and the views of States in this Committee. As well, on the nature and function of subsidiary means, focusing on judicial decisions as subsidiary means for the determination of rules of international law; the general nature of precedent in domestic and international adjudication, including the relationship between Article 38, paragraph 1 (d), and Article 59 of the Statute of the International Court of Justice; and the future programme of work on this topic.

In relation to the discussions, we wish to share the following views:

On Draft Conclusion 4

With respect to Paragraph 1 referring to “Decisions” and “International courts and tribunals”

We reaffirm our agreement with the draft conclusion commentary of Conclusion 1 from the Commission’s 74th session that, in relation to ICJ Article 38, paragraph 1 (d) which uses the term “judicial decisions”; this sub-paragraph omits the word “judicial” to ensure that the draft conclusion applies to a wider set of decisions from a variety of bodies, which broadens the scope.

We agree that “Courts and tribunals” should encompass both international courts and tribunals and national courts or municipal courts.

We concur with the idea that this broader meaning of ‘decisions’ include not only final judgments, advisory opinions, awards and any other orders issued in incidental or interlocutory proceedings, including provisional measures.

We also understand “International courts and tribunals” in its broad sense, intended to cover “any international body exercising judicial powers” called upon to determine the existence and content of rules of international law.

On the phrase “In particular of the International Court of Justice”, we see the value of highlighting decisions of the “International Court of Justice” to (1) give due deference to the ICJ’s extensive judicial practice; (2) in recognition that the ICJ is the “principal organ of the United Nations”, as stated in Article 92 of the UN Charter; (3) ICJ has the special status as the only standing international court of general subject matter jurisdiction; and (4) Each member of the United Nations, under Article 944 of the UN Charter, undertakes to comply with the ICJ’s decision in any case to which it is a party.

Nevertheless, spotlighting the ICJ’s role in this Guideline does not imply that a hierarchy exists in relation to other international courts and tribunals created by States or international organizations.

On Paragraph 2

On Paragraph 2, we understand that the present formula, in contrast to Article 38 par 1 (d) of the ICJ Statute, draws distinction in practice between decisions of national courts and

international courts. The distinction is warranted in the sense that, as rightly pointed out in the report, while decisions of international courts and tribunals are authoritative means for identifying existence and scope and content of international law as their decisions reflect the views of international tribunals that are constituted to interpret and apply international law, the decisions of national courts stem from a particular legal system which may incorporate international law only in a particular way and to a limited extent.

While we note that the Commission has stated that Draft Conclusion 4 must be read together with Draft Conclusion 3, 7, and 8, which sets out illustrative criteria for the assessment of the weight to be given to decisions of any court or tribunal; bearing in mind that best efforts should be made to use a representative set of court decisions from various legal systems, regions and language of the world to enhance the legitimacy and development of international law, we would caution against rigid application of these criteria for the assessment of subsidiary means for the determination of rules of international law.

We would urge the Commission to consider anew the criteria, particularly the specific references to the level of agreement among those involved and the reception by States and other entities.

On Draft Conclusion 5

We endorse the use of the language that is inclusive and broad, allowing for the diversity of viewpoints and teachings from different parts of the world. We note, in this regard, that the phrase “Those generally reflecting the coinciding views of persons with competence in international law from the various legal systems and regions of the world” has replaced the ICJ Statute Article 38 par 1 (d) phraseology “teachings of the most highly qualified publicists of the various nations”.

We also welcome the use “Due regard,” which we read to be a duty to exert best efforts to ensure the representativeness of the teachings to be considered, particular in terms of gender and linguistic diversity.

On Draft Conclusion 6

We note that subsidiary means are not a source of international law in themselves. Here, the Commission has explicitly set out that the function of subsidiary means is ‘to assist with the determination of the existence and content of rules of international law.’ We concur that this function does not preclude other use of materials as subsidiary means for the determination of rules of international law. In particular, as noted by the Commission, when it comes to the decisions of national courts, they may serve a dual function: (a) as evidence of the elements of customary international law; or (b) as subsidiary means that are useful to assess whether there exists evidence of State practice and *opinio juris*.

On Draft Conclusion 7

We note the position that, as a general rule, there is no system of *stare decisis* in international courts or tribunals under international law. However, for reasons of legal security and stability, courts or tribunals routinely take into account the legal reasoning contained in past decisions, although they are not under an obligation to apply them.

We endorse the suggestion that the aforementioned draft conclusions could give guidance not just to courts and tribunals as users of judicial decisions, but to others including policymakers, legal advisers, agents and advocates.

We intend to revisit these views when we consider again these topics in subsequent sessions.

Thank you, Mr. Chair. **END**

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