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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 III – Chapters VI (Prevention and repression of piracy and armed robbery at sea), VIII (Non-legally binding international agreements) and IX (Succession of States in respect of State responsibility)
30 October 2024
79th Session of the United Nations General Assembly

Mr. Chair,

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

With respect to the Cluster III, we wish to share the following preliminary observations on Chapters VI (Prevention and repression of piracy and armed robbery at sea), VIII (Non-legally binding international agreements) and IX (Succession of States in respect of State responsibility).

On "Prevention and repression of piracy and armed robbery at sea"

On Chapter VI (Prevention and repression of piracy and armed robbery at sea)," we express appreciation to former Special Rapporteur Mr. Yacouba Cissé for his initiative and important work on this topic, including for the first report in 2023 reviewing the national legislation and judicial practice of States on the definition of piracy and the implementation of conventional and customary international law as well as his second report on international and regional approaches to cooperation on the prevention and repression of piracy and armed robbery at sea.

We congratulate Special Rapporteur Mr. Louis Savadogo for his appointment and, noting his expertise in the law of the sea, we look forward to further work on this topic, and bearing in mind the integrity and comprehensive character of the 1982 United Nations Convention on the Law of the Sea.

Our comments are in addition to our written submission on the topic, where we set out the primacy of the UNCLOS. In the submission, we noted that armed robbery at sea is an act distinct from piracy; that there is no existing universal definition of armed robbery at sea, but that there are several authoritative sources which provide useful definitions. Among others, we cited the

International Maritime Organization Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery at Sea; the Djibouti Code of Conduct; and in our region, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia, to which the Philippines is a party.

We also indicated that piracy is punished under our domestic law, under the Revised Penal Code) and under Presidential Decree No. 532 (P.D. 32), otherwise known as the Piracy and Highway Robbery Act of 1974. Relevant Philippine case law have also emphasized that piracy is 'a crime not against any particular state but against all mankind'. As such, 'it may be punished in the competent tribunal of any country where the offender may be found or into which he may be carried' and that 'the jurisdiction of piracy unlike all other crimes has no territorial limits.'

Mr. Chair,

The UNCLOS is the legal framework within which all activities in the oceans and seas must be carried out, and its provisions, particularly Article 100, which define the general obligations of States on the repression of piracy, is the logical starting point for discussions on this topic.

Further progress should proceed in the context of a roadmap or framework, as noted by members of the Commission, and particularly by developing and complementing norms within the legal framework of the Convention. In terms of aims, we also appreciate the focus on international cooperation and on enhancing harmonization of national laws.

With respect to the draft Articles proposed by the Special Rapporteur in the second report, our views are as follows:

Draft Article 4

We note the efforts to provide concrete content on the general obligations for States regarding the prevention and repression of piracy under Article 100 of UNCLOS by spelling out (1) a duty of cooperation as well as (2) a duty of prevention.

Clarifying whether this obligation applies equally to armed robbery at sea would be important.There is value in enumerating the forms of cooperation, for illustrative purposes, including through forms that regional cooperation takes. There needs to an understanding, as well, on the nature of the obligation, whether it is one of due diligence, means, or results.

Article 4(3) which states that 'No circumstances of any kind whatsoever may be invoked as a justification of piracy or armed robbery at sea' may need further consideration.

Draft Article 5

There is a need indeed to clarify the difference between prevention and repression, and here we note that UNCLOS is explicit on the duty to cooperate in the repression of piracy.

Draft article 6

We note the need for harmonizing national laws to criminalize piracy and armed robbery at sea,

including for purposes of enhancing cooperation.

Paragraphs 4 and 5 of draft article 6 would need further consideration, as it is premised on the offence referred to being committed pursuant to an order of a Government.

Draft article 7

There is a need to weigh in on the applicability to armed robbery at sea of a universal jurisdiction regime in paragraph 2 of draft article 7.

In conclusion, it would be important to make an early indication, if feasible, on the final form of the outcome of the work of the Commission. If the goal is geared towards harmonization of national laws, then the final form of the draft Articles could take that into consideration. Further clarity on the final form would help States in formulating and focusing their responses in their engagement with the work of the Commission on this topic, bearing in mind, as well, the consensus, under the Pact for the Future, that all efforts must be carried out to address the serious impact of threats to maritime security and safety.

On "Non-legally binding international agreements"

Turning now to Chapter VIII on "Non-legally binding international agreements" we have previously welcomed the inclusion of this topic in the work programme of the Commission and thank the Special Rapporteur, Mr. Mathias Forteau, for his first report intended to enable an initial discussion and to define the general direction of the Commission's work on this topic.

We appreciate the focus on three general categories of questions on: (a) criteria for distinguishing treaties from non-legally binding international agreements; (b) regime of non-legally binding international agreements; and (c) (potential) legal effects of non-legally binding international agreements.

We also think that the early consideration on the form of the final outcome of the work, and the clear proposal from Special Rapporteur to prepare a set of draft conclusions is helpful, also in aiding Member States in providing inputs to the Commission, moving forward.

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

We support the goal that this would should provide legal clarification on relevant issues. Further, we also prefer an outcome that could provide States with practical guidance which could address the need to formalize procedures for the conclusion of such non-legally binding international agreements.

We agree that work on this topic should be representative of regions, legal systems, forms of agreements and legal issues. We note the proposal in the first report to request information relating to the topic from States and from international organizations and expert institutions.

We note that while resort to non-legally binding international agreements is widespread, state practice may not be documented, which may pose a challenge in making submissions to comply with such request. For instance, in the Philippines, the regulatory framework is focused on

legally-binding international agreements. In terms of state practice, this takes the form of an executive issuance/guidelines that on the negotiation of treaties and other agreements and the internal manuals and other related treaty acts.

As such, the request for information, other than a general request for inputs on state practice, could also take the form of a targeted questionnaire, built around the general categories of questions identified by the Special Rapporteur. Provision of examples of existing texts adopted by States for purposes of formalizing procedures in this realm, including links, would be useful for other states that intend to do the same.

We look forward to progress in the programme of work on this topic, as proposed by the Special Rapporteur.

On "Succession of States in respect of State responsibility"

We note the information that the 75th session, the Commission re-established the working group on this topic, with Mr. August Reinisch as Chair, and that the group convened twice this year. We also note that the prevous Special Rapporteur, Mr. Pavel Šturma, submitted five reports from 2017 to 2022 and that draft guidelines on this topic upon his recommendation, for which we are grateful.

The Commission's report outlines the issues and challenges, including the outstanding substantive aspects of the topic that need to be addressed, including on whether it was responsibility or the rights and obligations that arose therefrom that would be transferred upon a succession of States. We note that the Commission's Members recognized that it might be necessary to develop more fully the necessity and possibility of distinguishing between a 'transfer of responsibility' as such, and a 'transfer of rights and obligations arising from the responsibility of a predecessor State.'

We had the same challenges in identifying relevant state practice on this topic, including case law in our jurisdiction. It has been noted by the Working Group that state practice with regard to succession of States in Asia has been insufficiently reflected, but the conceptual challenge could be part of the issue.

The Supreme Court of the Philippines had occasion to delve into this general topic and forward an interpretation in 1949. It ruled that a State, after assumption of sovereignty, continues to be bound by the international rights and obligations of its colonizer. In the 1949 case of *Shigenori Kuroda v. Rafael Jalandoni*, a legal argument was raised in trial that the as the Philippines is not a signatory nor a party to the Hague Convention on Rules and Regulations covering Land Warfare, the accused war criminal was effectively charged of 'crimes' that are not based on law, national and international.

However, the Supreme Court ruled that the Philippines was then 'under the sovereignty of the United States, and thus we were equally bound together with the United States and with Japan, to the rights and obligations contained in the treaties between the belligerent countries. These rights and obligations were not erased by the assumption of sovereignty. Therefore, war crimes committed against our people and our government while we were a Commonwealth, are triable and punishable by our present Republic.'

On the future of the work on this topic, bearing in mind the challenges and ways forward identified, time and resource constraints, including those borne out of the organization's liquidity situation, and noting the character of the Commission as an independent subsidiary body, we would tend to support the 'prevailing tendency' of Commission members in favor of a report summing up these challenges, while acknowledging the important work that has been accomplished so far.

We intend to revisit the views on Chapters III and VI when we consider anew these topics in subsequent sessions.

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

PHILIPPINE MISSION TO THE UNITED NATIONS
556 FIFTH AVENUE, NEW YORK, NY 10036 • TEL. (212) 764-1300 • FAX (212) 840-8602