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STATEMENT

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

Agenda Item 77: Report of the International Law Commission on the work of its seventy-fourth session

Cluster I – Generally accepted principles of international law and Sea-level rise in relation to international law

27 October 2023

78th Session of the United Nations General Assembly

Mr. Chair,

The Philippines commends the International Law Commission

for their substantive presentation to the Sixth Committee. We welcome the leadership of the Co-Chairs as women jurists of recognized competence in international law and in forging the path for more women to participate in this important forum shaping international law.

We also thank Mr. Marcelo Vázquez-Bermúdez as Special Rapporteur and co-chairs Mr. Bogdan Aurescu of Ms. Nilüfer Oral and the other distinguished members of the reconstituted Study Group for their contributions, respectively, on “General principles of law” and sea-level rise in relation to international law.

We welcome the completion of the first reading of 11 draft conclusions on general principles of law and progress on the Commission’s deliberations on sea-level rise in relation to international law. We thank the Secretariat for their outstanding support to the ILC as well as the extensive briefing for the Sixth Committee delegates on the work of the Commission ahead of this meeting.

We wish to share the following general observations on the chapters on “General principles of law”, “Sea-level rise in relation to international law” and “Other decisions and conclusions of the Commission”, and the Commission’s approach and working methods.

On “General principles of law”

Conclusion 1

With respect to Conclusion 1, we agree that the legal nature of general principles of law as one of the sources of international law is confirmed by their inclusion in Article 38, paragraph 1 (c), of the Statute of the International Court of Justice, together with treaties and customary

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custom. Hence, when applied by the I

given a certain power to develop and define the principles of international jurisprudence. In the result a joint proposal by Root and [Walter] Phillimore was accepted and this is the text [in Article 38(1)(c)] we now have.

Root and Phillimore regarded the principles in terms of rules accepted in the domestic law of civilized states.

In the pre-amendment period, international tribunals did imbibe the national-law orientation and continue to engage in this practice, as though the amendment «in accordance with international law' does "not add anything new to the meaning of the old text."

Despite this, Brownlie subscribes to the view taken by Oppenheim: "The intention is to authorize the court to apply the general principles of municipal jurisprudence, in particular of private law, in so far as they are applicable to relations of States."

In conclusion, Professor Magallona noted that what has gained importance is the method or process by which in the application of national-law principles the ICJ, or any other international tribunal, may adapt those principles as elements of international law. He also noted the individual opinion in the South West Africa Case where Judge McNair cautioned: "The way in which international law borrows from this source is not by means of importing private law institutions lock, stock and barrel, ready-made and fully equipped with a set of rules. It would be difficult to reconcile such a process with the application of the general principles of law.'

Conclusions 8, 9

alia, peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and will promote the economic and social advancement of all peoples of the world, in accordance with the principles of the United Nations, as set forth in the Charter.

With respect to the possible use of subsequent agreements and practice as authentic means of interpreting the UNCLOS, in line with the Vienna Convention on the Law of Treaties, we will consider this in due course, noting that the UNCLOS, as constitution of the oceans, presents a carefully crafted balance of interests of states.

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