



# CROATIA

Statement by

Gordana Vidović Mesarek  
*Director-General*

Directorate-General for European and International Law  
Ministry of Foreign and European Affairs

at the

77th Session of the General Assembly  
Sixth Committee

*Agenda Item 77*

**Report of the International Law Commission  
on the work of its seventy-third session  
Cluster III: “Succession of States in respect of State responsibility”  
and “General principles of law”**

2 November 2022

- *Check against delivery* -

Mr. Chair, distinguished colleagues,

In addition to our statement in which we have addressed topics of the ILC Report included within Cluster I and Cluster II, in the following we will address two topics from Cluster III, namely “Succession of States in respect of State responsibility” and “General principles of law”.

**[Succession of States in respect of State responsibility]**

Mr. Chair,

As regards the topic of “Succession of States in respect of State responsibility”, Croatia highly appreciates the significance that the ILC has given to this issue so far. In this regard, we express our deep appreciation to the Special Rapporteur, Mr. Pavel Šturma, for his fifth report and for the outstanding contribution he has made to the work of the ILC on the topic.

Croatia takes note of the ILC’s decision to instruct the Drafting Committee to proceed with the preparation of draft guidelines on the previously prepared and provisionally adopted draft articles.

We look forward to following the continuation of the topic at the Commission’s next session and to the appointment of a new Special Rapporteur. In further consideration of this topic, the Commission should pay attention, *inter alia*, to the situations in which part or parts of the predecessor State that would become the successor state could bear responsibility for international illegal acts committed not only towards/against third States, but also towards/against other successor states of the former common state.

**[General principles of law]**

Mr. Chair,

Let me now turn to the topic “General principles of law”. We would like to thank the Special Rapporteur Mr. Marcelo Vázquez-Bermúdez for his third report, which discussed the issue of transposition, general principles of law formed within the international legal system, and the functions of general principles of law and their relationship with other sources of international law. We also welcome the engaged discussions in the Commission on this topic.

We agree that a cautious approach is advisable when discussing issues related to the contentious category of general principles of law formed within the international legal system, bearing in mind that the general approach of international legal scholars is that the general principles of law cannot be directly formed within the international legal system. In this sense, we share the general assessment that controversies over general principles formed within the international legal system are still unresolved and that to this end additional efforts must be invested to further examine, elaborate and clarify remaining issues relating to this particular category. We are of the view that there should be a clear distinction between general principles and other sources of international law, especially in relation to customary law, which still is not the case now.

This being said, in our view the present formulations of draft conclusion 6 and draft conclusion 7 are still unclear and require further consideration. To this end, it is important to clearly determine the elements necessary for the recognition of general principles formed within the international legal system.

Moreover, additional efforts could be made in order to merge and combine draft conclusion 2 and draft conclusion 5, since in our view they are addressing the same issue only differently stipulated.

We would also like to point out that examples mentioned in the footnote 1202 of the Report already exist as examples of general principles of law that derive from national legal systems (i.e. *uti possidetis juris*).

It is our view that additional clarifications are also needed in relation to the transposition of general principles of law from national legal systems to the international legal system since the crucial open issues are still left unanswered and could lead to conclusion that there are no differences between general principles of law and customary law. We believe that some answers could be further explored in connection with functions of Article 38, paragraph 1 (d) of the Statute of the ICJ, which recognizes judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

With regard to issue of hierarchy, which was part of the discussion within the ILC and reflected in the Report, we would like to point out that due to the fact that general principles of law are *lex generalis*, they tend to be applied rarely in comparison to treaties and customary international law which are *lex specialis*. With reference to that, it is our view that there is no hierarchy between general principles of law, rather a principle of speciality. In this regard, the principle of speciality should apply in relation to two rules of same source.

Finally, let me refer briefly to the Special Rapporteur's first report in which he looked at the jurisprudence of international courts and practice of arbitration tribunals. The considerable increase in the ICJ's caseload in the past years and the geographical variety of States appearing before it, as it was also pointed out in the last week's EU statement on the report of the ICJ to the General Assembly, demonstrates their increasing confidence in the independence, impartiality, integrity and high legal standards of this permanent court, principle judicial organ of the United Nations. In this regard we would like to emphasize the impartiality and independence of adjudication mechanisms as crucial general principles of law and a basic prerequisite of their existence and functioning. The independence and impartiality are indeed a cornerstone of rule of law, on national and international level, an imperative which must be preserved and complied with in all circumstances and at all costs.

Mr. Chair,

Let me conclude by emphasizing once again a great importance that Croatia attaches to the role and work of the ILC and we are looking forward to continued engagement in further debates in the Sixth Committee.

I thank you for your attention.