



United Nations General Assembly Sixth Committee: Plenary debate on the report of the International Law Commission, Cluster I

23 October 2023

Statement by Mr Adam McCarthy, Chief Counsel, Department of Foreign Affairs and Trade

Check against delivery

Thank you, Chair.

Australia aligns itself with the joint statement delivered by Fiji on behalf of the members of the Pacific Islands Forum. We wish to make these additional remarks in our national capacity.

Australia thanks the International Law Commission for its report on the work of its 74th session. We acknowledge the Commission's valuable contribution to the codification and progressive development of international law.

Australia also welcomes both the new and re-elected members of the Commission who commenced their five-year term this year.

Although gender balance continues to evade the Commission, we are pleased with its decision to appoint two of its eminent women members as the Chair.



We again encourage the Commission to ensure gender balance – as well as geographic balance and representation of the principal legal systems of the world – among the Bureau, Special Rapporteurs and Chairs of the Drafting Committees, Working Groups and Study Group.

[Mr/Madam] Chair,

General principles of law

Australia expresses its sincere appreciation to the Special Rapporteur and Drafting Committee for the preparation of the text of the draft conclusions on general principles of law.

The eleven draft conclusions are a valuable first step to help States clarify the interpretation of ‘general principles of law’ within the meaning of Article 38, paragraph (1) of the Statute of the International Court of Justice (ICJ).

With respect to general principles of law derived from national legal systems, Australia welcomes the Commission’s further work to clarify how to identify that a principle is transposable to the international legal system.

We also welcome the further commentaries provided by the Commission on the existence and identification of general principles of law formed within the international legal system.



We note the inclusion in the commentaries of some instances of State practice and decisions of international courts and tribunals.

Australia continues to express hesitation regarding the inclusion of a ‘without prejudice’ clause in draft conclusion 7, particularly as the conclusion does not specify criteria by which a general principle of law in this category can be identified.

Australia welcomes the clarification provided by the Commission in draft conclusion 10 that the functions of general principles of law support and complement existing treaties and customary international law.

Australia once again extends its appreciation to the Special Rapporteur and the Commission for their work in formulating the draft conclusions on general principles of law, and welcomes the decision to transmit them to governments for comments and observations.

[Mr/Madam] Chair,

Sea-level rise in relation to international law

Australia welcomes the Commission’s continued consideration of the issue of sea-level rise in relation to international law.



We are grateful to the Co-Chairs of the Study Group for preparing the additional paper to the first issues paper, which provides a strong basis for continued discussion on this topic that is of great importance.

Australia recognises that climate change remains the single greatest threat to the livelihoods, security and wellbeing of peoples of the Pacific.

We also recognise that climate change-related sea-level rise poses an existential threat to low-lying States, from the Pacific and beyond.

The Commission's work on sea-level rise and international law has helped to progress national, regional and international action and responses to this important issue.

In this regard, Australia was pleased to participate in the Pacific Islands Forum (PIF) Regional Conference on preserving statehood and protecting persons in the context of sea-level rise in Nadi, Fiji in March this year.

The PIF Regional Conference helped advance our thinking on international law issues in the context of sea-level rise, including its broader implications on statehood, sovereignty and human rights.

It usefully clarified how both international law and policy responses were instrumental in our response to sea-level rise.



Another key outcome of the PIF Regional Conference was our joint submission to the Commission in August 2023.

In that submission, the PIF identified a number of elements as deserving of consideration by the Commission in relation to statehood and the protection of persons affected by sea-level rise.

We draw these elements to the attention of all States as they too advance their consideration of these important issues.

Australia reiterates its support for our Pacific neighbours and others in taking steps to preserve their statehood and protect the human rights of persons affected by sea-level rise.

[Mr/Madam] Chair,

Australia further recalls that PIF Leaders adopted the ground-breaking Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise (the Maritime Zones Declaration) in 2021.

This Declaration upholds the integrity of the UN Convention on the Law of the Sea (UNCLOS) and preserves maritime zones established in accordance with UNCLOS.



We are pleased to see that there has since been positive support for the Maritime Zones Declaration, beyond the Pacific, thus contributing to the progressive development of international law and State practice on the interpretation of UNCLOS.

Bearing in mind that one of the issues raised in the Study Group's additional paper on sea-level rise is on maritime boundaries, Australia encourages the continued support for the PIF Maritime Zones Declaration.

[Mr/Madam] Chair,

Australia also notes the upcoming climate change advisory proceedings before the ICJ and the International Tribunal for the Law of the Sea.

These proceedings may consider the issues addressed by the Commission's Study Group on sea-level rise in the context of international law, reinforcing the importance of the Commission's work.

We reiterate the value of the Commission's discussions to date, including the sharing of recent State practice, which can play a key role in progressively shaping the development of international law in the context of sea-level rise.

We look forward to continuing to work with our Pacific neighbours and the broader international community on these important issues.



[Mr/Madam] Chair,

Other decisions and conclusions

Turning to the other decisions and conclusions contained in the Commission's latest report, Australia welcomes the Commission's decision to reconstitute its Working Group on methods of work.

We support efforts across the UN system, including within the Commission, to improve inclusivity, efficiency and effectiveness, thereby leading to more fit-for-purpose institutions and outcomes.

In this context, we would particularly welcome consideration of how to strengthen the symbiotic relationship between the Commission and the Sixth Committee in our common endeavour towards the codification and progressive development of international law, consistent with Article 13, paragraph (1) of the UN Charter.

We welcome the Commission's recommendation to hold the first part of its 77th session in New York in 2026, noting this is the earliest opportunity in the present quinquennium to do so.

However, we do not want to wait that long to consider others means through which we could strengthen the substantive exchange between the two bodies.



We encourage members of the Commission, especially Special Rapporteurs, to take advantage of virtual working methods to increase informal, intersessional dialogue with the Sixth Committee and its members, both in New York and in capitals.

Finally, Australia looks forward to the 75th anniversary of the first session of the Commission in 2024. This will be an opportunity to reflect on the invaluable contribution the Commission continues to make to international cooperation, the strengthening of national legal capabilities and our pursuit of a world where differences and disputes are settled through institutions and agreed rules and norms, and not by power and size.

Thank you.