

**Report of the International Law Commission on the work of its
seventy-fourth session
(Agenda item 79)**

Cluster I

Chapters: I, II, III, IV (General principles of law), VIII (Sea-level rise in relation to international law) and X (Other Decisions and Conclusions)

Mr./Madam Chair,

At the outset, my delegation would like to congratulate you and the other members of the Bureau for your election.

We would also like to congratulate the new members of the International Law Commission for their election, earlier in 2021, and wish them all the success throughout their mandate.

We are happy that there are now more women elected as members of the Commission and that two of them – Ms. Nilüfer Oral and Ms. Patrícia Galvão Teles – have been elected as Chairs of the Commission. They are, respectively, the second and third woman to have ever been elected as Chair of the Commission. We, Member States, can and must still do more to promote gender parity in the Commission.

Allow me to also thank the current Chair of the International Law Commission, Ms. Patrícia Galvão Teles for presenting the Report on the work carried out by the Commission during its seventy-fourth session, as well Ms. Oral for her presentation as Chair of the first part of the session.

Finally, we would like to convey our appreciation to the Office of Legal Affairs for its contribution in assisting the Commission in its work. We understand that this is Mr. Huw Llewellyn's last 6th Committee. My delegation would thus like to take this opportunity to thank him for his important contribution to the dissemination, codification and progressive development of international law and wish him all the best in his future endeavours.

In today's statement, my delegation will begin by making a few general comments on the Commission's work, including on Chapter X of the Report, "Other Decisions". We will then address the topics "General principles of law" and "Sea-level rise in relation to international law". The other chapters of the Report will be addressed in the next days, according to the clusters proposed.

In the interest of time, my delegation will deliver an abbreviated version of its statements. The full statements will be made available for publishing on the website of the Committee.

General comments, including "Other Decisions" – Chapter X of the ILC Report

Mr./Madam Chair,

As always, Portugal has followed the work of the International Law Commission during its seventy-fourth session with great interest and attention. We note the adoption, on first reading of the draft conclusions on general principles of law, together with commentaries thereto.

Portugal welcomes the Commission's decision to include on its programme of work the topic "Non-legally binding international agreements". We believe that it is a topic with a practical relevance for governments in the conduction of their daily foreign affairs. We will follow the consideration of this topic by the Commission with great interest.

Furthermore, we also welcome the recommendation by the International Law Commission to hold the first part of its seventy-seventh session, in 2026, in New York. We feel that it will be a good opportunity to raise the awareness in New York of the work of the Commission and enhance its interaction with other bodies of the United Nations and with State representatives based in New York.

Mr./Madam Chair,

We would like to take the opportunity to use our introductory remarks to once again address the broader issue of codification and progressive development of international law under the auspices of the United Nations, which is of great importance to Portugal. In our view, the United Nations and its Member States could do more in a time when international law is ever more necessary to cope with the increasing challenges posed by environmental threats and climate change, armed conflicts or human rights.

The products of the International Law Commission may have different formats and outcomes. However, in cases where the Commission has expressly recommended the adoption of draft articles as a convention, the 6th Committee has chosen not to act and thus prioritize consensus, even when only a few States oppose moving forward.

The Charter, in its Article 13, confers upon us the responsibility to pursue "progressive development of international law and its codification". It might be questioned whether the General Assembly has been up to this task for the last two decades.

We should always strive for consensus. But consensus is a negotiation method and a goal by which every delegation is expected to contribute in good faith to a common understanding. It is not a procedural rule or a dogma, and it cannot be used as a veto.

If we do not address this issue and seek to improve our working methods, we risk severely impairing and undermining the potential of the contribution of the International Law Commission and the 6th Committee.

As such we believe that we – the 6th Committee, alongside with the Commission – must engage on a serious reflection on working methods and procedures for following up on the work of the ILC, namely when it comes to codification.

General principles of law - Chapter IV

Mr./Madam Chair,

I will now turn to Chapter IV of the Report of the International Law Commission, concerning the topic “**General Principles of Law**”.

We would like to begin by thanking the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, for his hard work on this subject, which allowed the Commission to conclude the first reading of these Draft Conclusions, during this year’s session.

Portugal, as in previous years, would like to reiterate its belief that this topic gives the Commission a chance for complementing its existing work on sources of international law and for providing added guidance on the nature, identification, and application of the general principles of law, as well as on their relationship with other sources of international law.

Mr./Madam Chair,

Last year, we had commented on the issue of identification of general principles of law formed within the international legal system, which is dealt in Draft Conclusion 7. We had expressed our understanding that its paragraph 2, along

with the commentary thereto, was not sufficiently clear, namely when it came to the distinction between general principles of law and international customary law.

Although we acknowledge the effort that has been made to improve the commentaries to this Draft Conclusion, we still think it raises some questions. Therefore, we believe the Commission could give further consideration to this issue, namely to avoid the risk of having a very faint line drawn between sources of international law, where the distinction of general principles from international conventions and customary law is not as clear as it could be.

Furthermore, and taking into consideration Part Five of the Draft Conclusions on Identification of Customary International Law, my delegation would still welcome draft conclusions (and commentaries) on the relevance of other subsidiary means for the determination of general principles of law. Those could cover, for example, resolutions of the United Nations, documents from international expert bodies, as well as outputs of the International Law Commission.

[Mr./Madam Chair,

To finalize our statement on this topic, I would like to make a reference once again to the functions of General Principles of Law.

We share the understanding that the gap-filling function is performed to avoid situations where a decision cannot be made due to a lacuna in the law. In addition, that general principles of law perform other important functions in the international legal system.

As Portugal has mentioned previously, it is its understanding that General Principles of Law set the ethical-normative scene for other norms and have a supplementary function of filling the gaps and avoiding rulings of non liquet.

In this sense, we believe that the Commission needs to analyze further this question.]

Mr./Madam Chair,

Portugal will continue following attentively the work of the Commission on the topic of General Principles of Law and it hopes that the Commission can bring clear solutions the codification, interpretation and application of International Law.

Sea-level rise in relation to international law – Chapter VIII

Mr./Madam Chair,

I will now turn to the topic “Sea-level rise in relation to international law”. In doing so, Portugal would like to join others in commending the detailed and comprehensive nature of the additional paper prepared by Mr. Aurescu and Ms. Oral.

I will focus our intervention on (i) the option of fixed baselines associated with the concept of legal stability; (ii) the legal relevance of equity; and (iii) the permanent sovereignty over natural resources.

Mr./Madam Chair,

In what concerns the issue of whether the baselines are fixed, particularly with regard to the concept of legal stability and the principle of immutability of maritime boundaries, Portugal concurs that UNCLOS does not explicitly require State Parties to keep under constant review the baselines and outer limits of maritime zones. [*However, it is also true that the fact that it does not impose such an obligation is not itself a sufficient reason to conclude that the baselines are fixed. Nonetheless,*] we agree that ambulatory baselines implicitly create legal

uncertainty that potentially jeopardize international peace and security and put friendly relations among nations at risk – those are legal values that are inherently protected in Article 7(2) of UNCLOS.

[*Mr./Madam Chair,*

In the debate on the consequences of sea-level rise, it is implicitly and inherently assumed that maritime areas are growing at the expense of land territory. It is undeniable, however, that certain phenomena, including volcanic activity, can have the opposite effect. To be clear, the consequence is that land territory grows to the detriment of maritime areas. If hypothetically the right legal interpretation were that baselines are ambulatory, there is an obvious difference between these two opposing scenarios in terms of the permanence of the change. While baseline changes due to sea-level rise are likely to be less permanent and more frequent, baseline changes in the other scenario are likely to be more permanent. Bearing this in mind, it could be useful inquiring whether the same legal rationale regarding the nature of baselines applies, particularly in light of the principle of the immutability of boundaries. And, in this respect, to clarify that the interpretations that are being proposed apply to situations of climate change induced sea-level rise.]

Mr. Chair/Madame Chair,

On the relevance of equity to the phenomenon of sea-level rise, Portugal is of the view that equity is not an independent source of international law. [*Article 38 of the Statute of the International Court of Justice does not contain an explicit reference to equity. Instead, it refers only to, among other sources, (i) international custom, as evidence of a general practice accepted as law; and (ii) the general principles of law. However, Portugal notes that there is insufficient evidence that equity is part of international customary law within the meaning and scope of Article 38(1)(b) of the Statute of the International Court of Justice. Indeed, Portugal considers that it is difficult to identify a stable and predictable*

custom in relation to equity, given the broad and abstract nature of the concept. Having said that, equity is a normative concept of a fundamental importance to international law. Such relevance finds support in equity being a general principle of law, as correctly suggested by some member of the Commission. There are thus convincing legal arguments that equity, like any other principle of international law, is fundamental to the thorough interpretation and application of any international law rule or standard.]

Portugal believes that it is essential to determine in what measure the principle of equity is legally relevant in the context of sea-level rise. *[In principle, there seem to be three approaches that can be relied upon to determine the relevance of the principle of equity. First, the principle of equity—along with other principles of international law—is only relevant for establishing a general rule under UNCLOS with respect to the nature of baselines, i.e., whether they are fixed or ambulatory. In this case, the principle of equity would be relevant only ex ante. Second, the principle of equity is not relevant to answering the question of whether baselines are fixed or ambulatory, but it is only legally relevant ex post, i.e., when the application of the abstract rule with respect to baselines leads to an inequitable result. In this case, Portugal agrees that the influence of the principle of equity can contribute to legal instability. Third, the legal relevance of the principle of equity is both ex ante and ex post.]*

Mr./Madam Chair,

Let me now turn to the question of the permanent sovereignty over natural resources. Portugal considers that the legal relevance of this question is closely intertwined with the question of whether baselines are fixed or ambulatory under UNCLOS. *[In fact, an adequate answer to the first question depends on the answer to the second question, lest the international community finds itself in a legal dilemma.]* If baselines are considered ambulatory, sea-level rise will inevitably affect the delineation of maritime entitlements. As a result, the rights and obligations of States, including sovereign rights, associated with certain

maritime areas are likely to be affected. If the baselines are considered fixed, the maritime entitlements remain unchanged, as do the rights and obligations associated with them.

Mr./Madam Chair,

On the future work of the Commission and the Study Group, Portugal concurs that, based on the already-conducted research, there is room for the Commission to submit a roadmap outlining the form and content of its 2025 final report; and to propose specific guidance to practical problems, including by preparing an interpretative declaration regarding the nature of baselines.

Mr./Madam Chair,

Portugal would like to conclude by commending once more the Study Group for the quality of the work being carried out. Sea-level rise is a pressing topic of the utmost importance to many States and human beings, where the contribution of the International Law Commission is much welcomed by my delegation.

Thank you.