



# CZECH REPUBLIC

## **Permanent Mission of the Czech Republic to the United Nations**

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78<sup>th</sup> Session of the General Assembly  
Sixth Committee

Report of the International Law Commission on the work of its seventy-third and  
seventy-fourth sessions

**Statement by**

**Mr. Martin Smolek**

**Director-General for Legal Affairs  
Ministry of Foreign Affairs of the Czech Republic**

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One Dag Hammarskjöld Plaza, 48<sup>th</sup> floor  
885 Second Avenue, New York, NY 10017  
tel.: +1 (646) 981 4001, fax: +1 (646) 981 4099  
[www.mzv.cz/un.newyork](http://www.mzv.cz/un.newyork)

Madam / Mr. Chair,

The Czech Republic welcomes the completion of the first reading of the draft conclusions on “**General principles of law**” and appreciates the Commission and the Special Rapporteur, Mr. Marcelo Vázquez Bermudez, for their work on this topic. The Czech Republic intends to provide its written comments on the draft conclusions, therefore it will now limit itself to brief general comments on certain aspects of the draft.

As for the identification of general principles of law derived from national legal systems, we agree with the draft conclusion 4, according to which the identification of such principles requires two steps analysis: ascertainment of principle applied generally in national legal systems, and the applicability of such principle in international law. We also agree with the Commission that general principles of law are source of international law, which is formally equal to treaties and international customary law as other sources of international law and not in hierarchical relationship with them. At the same time, we note that general principles of law have, in practice, supplementary role and are resorted to only occasionally or exceptionally, when other rules of international law, namely treaty or custom, are not applicable.

According to the draft conclusion 5, the determination of general principles of law derived from national legal systems requires a wide and representative comparative analysis of national legal systems, including different systems of the world, and an assessment of national laws, decisions of national courts and other relevant materials. In our opinion, this threshold for the determination of general principles of law seems to be too high and may not reflect existing practice. We are of the opinion that certain analogy, which is made here with the identification of the rules of customary international law, appears to be inappropriate. Most of the general principles of law are universally recognized legal postulates and their identification is a result of long process, not of an ad hoc exercise as the draft seems to suggest.

As for draft conclusion 7 concerning general principles of law formed within the international legal system, we note that a significant number of Commission members have doubts about the methodology for the identification of this second category of general principles. Others are of the view that such principles do not fall within the scope of Article 38, paragraph 1 (c) of the Statute of the International Court of Justice. As we already expressed in our previous statements, we are not convinced that there is sufficient State practice, jurisprudence and teachings available for the suggestion that such principles fall within the category of general principles of law under Article 38 of the Statute. In our opinion, the Commission should examine the suggestion that the principles formed within the international legal system are instead highly general rules of conduct that are contained mostly in customary international law, or, less often, in treaties. Such principles may reflect basic elements or essential features of the international legal system. For example, the principle of sovereign equality of States and the principle of non-intervention in the internal affairs of another State are as such proclaimed in the

Declaration on Principles of International law concerning Friendly Relations and Cooperation among States of 1970. Further, the prohibition of crimes under international law, also mentioned in the Commission's report, has rather the character of the peremptory norm of customary international law. We are of the view that such principles do not belong into the category of general principles of law under Article 38 paragraph 1 (c) of the Statute. In some cases, so-called general principle might even have the non-legal character of a programme policy or guiding principle *de lege ferenda*, leading to future creation of norms of international law.

Madam / Mr. Chair,

Chapter VII of the Commission's report provides information about the Commissions' work on the challenging and complex topic "**Sea-level rise in relation to international law**", done by the Study Group co-chaired by Mr. Aurescu and Ms. Oral. The discussion of their additional paper to the first group of issues, namely those concerning the maritime zones, which covered a number of issues, principles and concepts, demonstrated a variety of views on the way to approach them.

Indeed, the outcome of the work of the Study Group – to be of assistance for developing policies and finding legal solutions to the problems arising from the sea-level rise – should be a comprehensive and objective analysis of the existing legal frameworks, including their possible inadequacies, with respect to the sea-level rise. Such inventory could serve as a tool for identification of various options of legal solutions for specific problems caused by the sea-level rise. It should not be, at this stage, an advocacy for some of them.

In general, we would also like to reiterate the importance of preserving the integrity of the United Nations Convention on the Law of the Sea in the work on the present topic. The Convention, reflecting customary international law of the sea, has a central role in the debates, and State practice based on the Convention is essential to the work of the Study Group on the topic.

We are looking forward, with great interest and curiosity, to further work of the Study Group.

Madam/Mr. Chair,

I would also like to comment briefly on "**Other decisions and conclusions of the Commission**". Our delegation welcomes that the Commission decided to include the topic "Non-legally binding international agreements" in its programme of work and congratulate Mr. Mathias Forteau for his appointment as Special Rapporteur. We believe that the Special Rapporteur's and the Commission's work will clarify principles governing this topic and provide practical guidance for States and international organizations in relation to non-legally binding international instruments.

In this regard, we would like to note that, in the numerous previous discussions in the Sixth Committee, the Czech Republic together with other States proposed to refer the topic

“Universal criminal jurisdiction” to the International Law Commission. A few years ago, the Commission itself included the topic in its long-term programme of work. Universal criminal jurisdiction is a very pertinent topic, subject of intense discussions, is relevant for State practice and meets the criteria for the selection of topics of the Commission. Therefore, we would like to support the inclusion of this topic on the active programme of the Commission.

Finally, we also note with satisfaction the establishment of a trust fund to receive voluntary contributions for assistance to Special Rapporteurs or Chairs of its Study Groups and matters ancillary thereto. We would like to inform that the Czech Republic, like many others, decided to provide voluntary contribution to this newly established fund.

Thank you, Madam/Mr. Chair.