



Statement on behalf of the Republic of South Africa

by

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before the Sixth Committee of the General Assembly

under Agenda Item 79:

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

Cluster I”

25 October 2023

Chairperson,

Thank you for affording us the opportunity to share our views on the report of the International Law Commission. My delegation wishes to express its gratitude to the International Law Commission for the work that it has carried out this year.

Chairperson,

In relation to the topic on general principles of law, South Africa would like to express its appreciation in particular to the Special Rapporteur, Mr Marcelo Vazquez-Bermudez, for his contribution on this topic. My delegation would also like to thank the Drafting Committee which, together with the Special Rapporteur, was able to conclude its first reading of the draft conclusions on general principles of law.

South Africa notes the importance of this topic and the need to have an improved understanding of the meaning of Article 38, paragraph 1 (c) of the Statute of the International Court of Justice when it refers to general principles of law as a primary source of international law.

Chairperson,

We will address some of the draft conclusions:

With respect to draft conclusion 3, we welcome the reference to “community of nations” as a substitute for the term “civilized nations” which is found in Article 38, paragraph 1 (c) as the term civilized nations is anachronistic. We agree with this formulation since all nations do participate equally and there should not be any kind of distinction in the formation of general principles of law.

The latest version of draft conclusion 7 refers to the recognition of the general principle of law as intrinsic to the international legal system. In the second report of the Special Rapporteur, the formulation of draft conclusion 7 found it necessary that the principle underlies general rules of conventional or customary international law. The latest version of draft conclusion 7 can result in States or actors providing vague and general

interpretations and be interpreted in a broad manner. We therefore urge the Special Rapporteur and the Commission to embark on a deeper study in this regard.

Chairperson,

In draft conclusion 11, the Special Rapporteur states that general principles of law, as a source of international law, are not in a hierarchical relationship with treaties and customary international law. This statement suggests that there is no hierarchy among the sources of international law as listed in Article 38 (1) of the ICJ Statute. Article 38 (1) of the ICJ Statute identifies the sources of international law, which include international conventions, international custom, and general principles of law.

Chairperson,

Article 38(1) does not explicitly rank these sources, but in practice it is understood that treaties take precedence over customary law and both treaties and customary law take precedence over general principles. We are aware of the different views by member states and therefore propose that draft conclusion 7 is explored further.

South Africa looks forward to hearing the views expressed by other delegations on this topic.

Chairperson,

In relation to the topic of sea level rise in relation to international law, my delegation wishes to express its appreciation to the International Law Commission for its work, and welcomes the opportunity to provide our comments on it.

South Africa extends its appreciation to the work of the Study Group on sea-level rise in relation to international law with key focuses on issues related to the law of the sea, which is chaired by Mr Bogdan Aurescu and Ms Nilüfer Oral, and would like to congratulate them together with the members of the Commission for their continued excellent work on this topic.

Chairperson,

South Africa recognises the necessity of addressing the issue of sea level rise, the adverse effects of which are exacerbated by storm events and normal high-water levels during spring tides, which recently caused severe damage in South Africa.

It is accepted that the States who stand to suffer the most from sea level rise had contributed the least to the problem. Equity is a fundamental principle that features in various international conventions, including the United Nations Convention on the Law of the Sea itself, as such equity should be a guiding principle in the Study Group's work on rising sea levels.

Chairperson,

As a coastal State which occupies the most southern tip of Africa with its long coastline stretching more than 3 000 km from the desert border with Namibia on the Atlantic coast southwards around the tip of Africa and then north to the border of subtropical Mozambique on the Indian Ocean, we follow with great interest the work of the Commission, especially, on the issue of providing legal certainty in relation to sea level rise with a focus on baselines and maritime zones.

South Africa supports the views as expressed by other Member States that the Commission, in providing practical guidelines, must consider and adopt an interpretation of the Convention which ensures legal stability and a balanced approach in relation to baselines and maritime zones, as opposed to proposing an amendment to the Convention or further adaptation of multilateral agreements.

To us, the Convention is a fundamental instrument which serves as the primary legal framework for the use and protection of the sea, thus we believe that its provisions are capable of being applied to resolving questions on sea level rise, such as Article 7, which could help us understand this relatively new issue.

However, South Africa pledges its support and appreciates the great work by the Commission in examining, within the framework of a Study Group the necessity to

providing concrete solutions to the practical problems caused by sea level rise, i.e. an adoption of a set of conclusions.

Chairperson,

In conclusion, we are encouraged by the number of dialogues held by Member States and experts in the field on this important topic, and our government assures the Commission of its continued participation in the respective discussions in promoting awareness.

I thank you.