



**SLOVENIA**

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**STATEMENT**

**BY**

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**on**

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

**Cluster I:**

**Chapter IV General principles of law**

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

**Chapter X Other decisions and conclusions**

**78th Session of the General Assembly  
Sixth Committee**

**New York, October 2023**

Mr Chairman,

Slovenia looks forward to discussing the activities of the International Law Commission as reflected in the report of the seventy-fourth session. First of all, we would like to thank the Chairperson of the Commission, Ms Patrícia Galvão Teles, and the other members of the Commission and the Special Rapporteurs for their active engagement during the last session. We hereby acknowledge their dedicated contributions and the progress made in various areas.

Mr Chairman,

On the first subject, General principles of law, Slovenia would like to thank the Special Rapporteur, Marcelo Vazquez-Bermudez, for his sound and well-structured work on the subject, and the Commission and the Drafting Committee for their work in presenting us with the draft conclusions on general principles of law adopted by the Commission at first reading. We were all faced with the task of better understanding one of the most contrasting sources of international law in Article 38(1)(c) of the ICJ Statute.

The process of codifying general principles of law has always proved difficult, mainly because there has never been a consensus on the nature, scope or function of these principles, nor is there a uniform practice among states and international courts and tribunals, especially in relation to other sources of international law. However, we cannot deny that they have played an important role in international law throughout history and that they are an important independent source of international law.

First, we agree with the terminology that the general principle must be recognised by the "community of nations", since the term "civilised nations" in the ICJ Statute is outdated from today's perspective. It should not be confused with the term "international community of States as a whole", which describes *jus cogens* norms. The term "community of nations" is, in our view, widely accepted and we welcome the ILC's comment that all nations participate equally in the formation of general principles of law.

We agree that it is crucial to provide more guidance on the identification of general principles of law. While the identification of general principles derived from national legal systems is relatively clear, the real challenge lies in formulating a precise methodology for the identification of general principles formed within the international legal system. We support the two-step approach for the identification of general principles derived from national legal systems, but we need a detailed methodology that does not leave room for interpretations that could lead to legal uncertainty.

The wording in draft Conclusion 7, paragraph 1, "a general principle of law that *may* be formed within international legal system", which would be recognised by the community of nations as inherent in the international legal system, does not, in our view, provide sufficient legal precision to address such an important issue.

On the question of hierarchy, we would like to point out that general principles of law are regarded as *lex generalis*, and are rarely applied compared to treaties and customary international law, which are *lex specialis*. We therefore welcome the Commission's Conclusion 11, which emphasises that general principles of law as a source do not have a hierarchical relationship with treaties and customary international law. Slovenia agrees that they enjoy equal status and are not limited to the practical role of filling gaps.

Finally, we find useful a list of possible general principles of law derived from the international legal system, such as *uti possidetis* or *compétence-compétence*, which are reflected in the decisions of the international tribunals.<sup>1</sup>

Mr Chairman,

Regarding the issue of Sea-level rise in relation to international law, Slovenia aligns itself with the statement delivered by the European Union and would like to further contribute to this debate in its national capacity.

Slovenia expresses its appreciation for the commendable efforts of the Study Group in further clarifying important aspects of the issue during this session. Slovenia would like to thank the co-chairs of the Study Group, in particular Mr Bogdan Aurescu and Ms Nilüfer Oral, for the supplementary paper to the first issues paper, which addresses the important issues and relevant principles, such as the meaning of legal stability, immutability and intangibility of boundaries, historic title and equity.

The issue of sea-level rise has been on the radar of the scientific community for quite some time, and the outlook based on these scientific assessments is far from optimistic. While some regions will be more affected than others, we can be sure that the phenomenon will affect the global community as a whole. The fact is that the effects of sea-level rise are already creating new sources of instability and conflict.

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<sup>1</sup> PCA Case no. 2012-04 in the matter of an Arbitration under the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, signed on 4 November 2009 between the Republic of Croatia and the Republic of Slovenia. Final Award, 29 June 2017.

The United Nations Convention on the Law of the Sea provides a comprehensive legal framework for the interaction, mutual understanding and cooperation of States in the oceans. It provides a basis for international peace and security. As underlined in the report, the concept of legal stability is enshrined in the United Nations Convention on the Law of the Sea. With this in mind, Slovenia supports the view that the Convention does not prohibit or exclude the possibility of preserving baselines and securing the maritime zones. Slovenia also supports the view that the United Nations Convention on the Law of the Sea must be interpreted in such a way that it can effectively address the challenges posed by sea-level rise and provide practical guidance to affected States. We understand the challenges faced by nations whose territories may disappear as a result of sea-level rise and therefore support the Commission's proposal that the Study Group should address the sub-topics of statehood and the protection of persons affected by sea-level rise in 2024.

Slovenia would like to thank the Commission for its comprehensive and methodical examination of the issue and for providing us with highly relevant data and an in-depth analysis of the legal aspects of sea-level rise in relation to international law. We look forward to the further work of the Commission and the substantive report of the Study Group on this issue in 2025.

Mr Chairman,

I would like to devote my final remarks to Other decisions and conclusions of the Commission. Slovenia welcomes the decision to appoint Mr Claudio Grossman Guiloff as Special Rapporteur on the issue of "Immunity of state officials from foreign criminal jurisdiction", and we look forward to the Commission's seventy-fifth session to resume consideration of this issue, as it is extremely important for providing greater clarity in

ensuring justice for atrocity crimes, on the one hand, and for ensuring the stability of international cooperation, on the other. We are also pleased to note that the issue of Non-legally binding international agreements has been included in the programme of the Commission and that Mr Mathias Forteau has been appointed as Special Rapporteur. We look forward to his reports on this important issue.

Secondly, we are pleased with the decision to reconstitute the Working Group on the working methods of the Commission and its deliberations, in particular on the possibility of developing rules of procedure for the Commission and perhaps also drawing up an internal practice manual on its working methods and procedures. We believe that this would be very useful for all States and international organisations, as well as for academics, to better understand the work of the Commission and to contribute to the transparency of its work. The standing agenda of the Working Group, in particular agenda item 2 – Relationship of the International Law Commission with the General Assembly and other bodies is, in our view, extremely important for improving the interaction between the ILC and the Member States. The ILC cannot make progress on issues without sufficient input from States. It is to be hoped that greater interaction will also enable States to be less reluctant to accept the findings of the Commission in the Sixth Committee.

We support the Commission's work programme for the remainder of the quinquennium, which we believe reflects the needs and challenges currently facing the international community. We also support the convening of the solemn session of the Commission next year to mark its 75<sup>th</sup> anniversary and its invaluable contribution to the codification and progressive development of international law.

Slovenia also appreciates the Commission's recognition of the need for gender parity in its own composition, and we acknowledge the contribution of women members to the Commission's outstanding work in several areas.

Finally, Slovenia appreciates the Commission's work for the promotion of the rule of law, in particular its fundamental legacy, i.e. the progressive development and codification of international law. I would like to take this opportunity to present Slovenia's concrete contribution to this cause in May this year. I am pleased to report that Ljubljana–The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes was adopted at the MLA Diplomatic Conference in Ljubljana, Slovenia. This process was the result of a decade-long effort by the group of states, namely Belgium, the Netherlands, Argentina, Mongolia, Senegal and Slovenia. We are proud to have adopted an instrument that will help to bridge the gap of impunity in international criminal law while prosecuting the perpetrators of atrocity crimes at the national level. Many civil society organisations, which were an integral part of the negotiation process, believe that the Convention reflects the progressive development of international law in many of its provisions. The signing ceremony of the Convention will take place in The Hague on 14 and 15 February 2024, and I cordially invite all States to join us in signing and ratifying this important document.

Thank you.