

Statement of the Republic of Korea

Item 79 - Report of the ILC on the work of the seventy-fourth session

Sixth Committee, 78th Session of the UNGA

October 2023

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General Principles of Law

Madam Chair,

First and foremost, my delegation welcomes the adoption of the draft conclusions on general principles of law on first reading, together with the commentaries to the draft conclusions, at the 74th ILC session. My delegation would like also to extend our gratitude to Special Rapporteur Mr. Marcelo Vázquez-Bermúdez and all the ILC members involved for their unwavering efforts and dedication.

It is hoped that, by incorporating comments and observations made by governments in the draft conclusions adopted on first reading, the Commission will bring to a successful conclusion this project, which will shed further light on one of the fundamental questions of international law, that is, the sources of international law.

Concerning the draft conclusions adopted by the ILC on first reading, my delegation would like to make the following comments:

First, as we previously pointed out, my delegation commends the ILC's endeavors to ensure that the draft conclusions resonate with the spirit of contemporary international law by replacing anachronistic expressions including "civilized nations" with "community of nations."

Second, as for Draft Conclusion 3(b) and 7 that provide for the additional category of "general principles of law formed within the international legal system", my delegation is aware that there are different views among the ILC members, scholars and the governments.

My delegation would like to ask the ILC to focus its discussion on the following aspects.

First, there is concern that introduction of this category might blur the distinction between customary international law and general principles of law. It would be helpful to address this question in more detail to provide more comprehensive support for the separate category of the general principles of law formed within the international legal system.

Second, Draft Conclusion 7(1) adopts the test of recognition by the community of nations as intrinsic to the international legal system, for the existence of a general principle of law formed within the international legal system. But the phrase "intrinsic to the international legal system" is not sufficiently clear, despite some examples given in the commentary to Draft Conclusion 7(1). We are doubtful as to whether such illustrations squarely fit the definition provided in Draft

Conclusion 7(1). In particular, it is questionable whether the principle of *uti possidetis* is an appropriate example of a general principle of law intrinsic to the international legal system.

My delegation hopes that these points will be sufficiently addressed in the future work of the Commission.

Sea-Level Rise in Relation to International Law

Madam Chair,

My delegation highly appreciates the submission of an excellent additional paper to the first issue paper prepared by Mr. Bogdan Aurescu and Ms. Nilüfer Oral. We also welcome the issuance of a selected bibliography as an addendum to the additional paper. As the summary of the exchange of views included in the ILC Report clearly shows, the Study Group carried out a most comprehensive and meticulous discussion on this topic, which has attracted profound interest of the international community.

In addition to the request for an advisory opinion on “obligations of States in respect of climate change” submitted in April 2023 by the General Assembly to the ICJ, similar questions are pending before the ITLOS and the Inter-American Court of Human Rights. My delegation appreciates that, against this background, the work of the ILC on the topic of “sea-level rise in relation to international law” is certain to assume heightened importance and hopes that the work of the Commission will prove to be highly useful in articulating normative answers to this crucial question.

In the previous interventions of this Committee, my delegation mentioned the need to approach this topic in terms of not only *lex lata* but also *lex ferenda*. However, it is also important to discuss this topic in more depth on the basis of widespread State practice so that the international community can devise more articulate and effective measures for addressing the global question of sea-level rise.

In this connection, my delegation would like to add the following comments.

First, given that sea-level rise progresses on a gradual basis, the Commission may need to structure its discussion on the topic more systematically based on different phases of the rise.

Second, sea-level rise tends to pose substantially diverging challenges to different States. The Commission may want to take a more flexible approach that takes into account the differing circumstances under which States find themselves. In May 2023, considering the particularly special circumstances faced by Pacific Islands and their concerns thereof, the Korea government expressed its support for the 2021 PIF Declaration on Preserving Maritime Zones in the face of Climate Change-related Sea-Level Rise, which proclaims that maritime zones, established in accordance with the 1982 UNCLOS, and the rights and entitlements that flow from them shall continue to apply without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise.

The Korean government recognizes that this topic will have a highly significant impact on the development of international law. We hope that the Commission will continue to make its outstanding contribution to the discussion of this crucial topic.

Other Decisions and Conclusions

Madam Chair,

My delegation would like to express appreciation and admiration for the International Law Commission (ILC) and its unwavering dedication to the systematic development and codification of international law. My delegation believes that the carefully outlined work programme for the quinquennium is a testament to the ILC's thoroughness in addressing complex legal issues.

My delegation takes notes that the inclusion of "Non-legally binding international agreements" as a new topic demonstrates the Commission's dedication to addressing emerging areas of international law. My delegation also welcomes the appointment of Mr. Mathias Forteau as Special Rapporteur for this topic and is certain that his invaluable insights will contribute greatly to advancing the discussion.

Additionally, my delegation extends our warm congratulations on the decision to appoint Mr. Claudio Grossman Guiloff as Special Rapporteur for the topic of "Immunity of State officials from foreign criminal jurisdiction." Mr. Guiloff's appointment as Special Rapporteur is a testament to the importance of this subject, and my delegation anticipates that this will bring more progress and discussions moving forward.

As we approach the momentous occasion of the seventy-fifth anniversary of the International Law Commission, my delegation would like to extend our heartfelt congratulations and profound respect to this esteemed body for its unwavering dedication to the progressive development and codification of international law over the past seven and a half decades.