

Report on the 74th session (2023) of the International Law Commission

65th meeting - Strasbourg, 28-29 September 2023

by Ms. Patrícia Galvão Teles
Chair of the International Law Commission

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Mr. Chair,

Members of the Committee of Legal Advisers on Public International Law,

Ladies and Gentlemen,

It is an honour and a pleasure for me to address the 65th meeting of the Committee of Legal Advisers on Public International Law of the Council of Europe (CAHDI) in my capacity as the Chair of the International Law Commission. I am grateful to the CAHDI for the opportunity to present the work of the Commission at its seventy-fourth session, which took place from 24 April to 2 June and from 3 July to 4 August this year.

On 13 July, during its session, the Commission had the privilege of receiving the Chair of the CAHDI, Mr. **Helmut Tichy**, and the Legal Adviser of the Council of Europe, Mr. **Jörg Polakiewicz**. We had a productive exchange of views on issues within the purview of the CAHDI and the ILC, including on legal challenges that we are facing. Being here with you today, I am grateful to continue the tradition of this dialogue between our two entities and to present to you the work of International Law Commission over this past year in turn.

This was a special year for the Commission as it began a new quinquennium, more than a half of the Commissions members commence their mandate this year for the first time. It was a challenging year, but I am proud this session the Commission made substantial progress in its work.

First of all, the International Law Commission adopted, on first reading, a set of draft conclusions on one topic, together with commentaries thereto. The Commission also commenced its consideration and made good strides on number other topics, including three new ones added to its work programme last year. The Commission's report is available on its website.

On **first reading**, the Commission considered one topic - “**General principles of law**”. The Commission had no new report of the Special Rapporteur at the present session. It continued its undertaking from the last year to perform a final review the entire set of the draft conclusions.

The Commission adopted, on the first reading, the entire set of draft conclusions on general principles of law on first reading, comprising of 11 draft conclusions, together with commentaries thereto. The draft conclusions are concerned with categories of general principles of law and the process of their identification. Among the draft conclusions are also provisions on the role of decisions of international courts and tribunals and teachings for determination of general principles of law. There are also conclusions relating to functions of general principles of law and their relations with treaties and customary international law.

The Commission decided, in accordance with articles 16 to 21 of its statute, to transmit the draft conclusions, through the Secretary-General, to Governments for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 December 2024.

As I mentioned earlier, the Commission also continued its work on **other main topics**.

With respect to the topic “**Sea-level rise in relation to international law**”, the Commission reconstituted the Study Group on sea-level rise in relation to international law. The Study Group had before it the additional paper ([A/CN.4/761](#)) to the first issues paper on the topic, prepared by Mr. Aurescu and Ms. Oral. Furthermore, a selected bibliography, prepared in consultation with members of the Study Group, was issued on 9 June 2023 as an addendum to the additional paper ([A/CN.4/761/Add.1](#)). The Study Group held an exchange of views on the additional paper, with a focus on the preliminary observations prepared by the Co-Chairs, as well as on the future programme of work on the topic, over twelve meetings, during the first and second parts of the session.

At the seventy-fifth session next year, the Study Group will focus on the subject of sea-level rise in relation to statehood and protection of persons affected by sea-level rise. In this connection, the Commission reiterates that it would appreciate receiving the information, or any updates to information already submitted, by 1 December 2023, on the set of questions set out in chapter III of the report of the Commission on the work of its current, seventy-fourth, session, and has already been drawn to the attention of governments and international organizations, as appropriate.

With respect to the topic “**Succession of States in respect of State responsibility**”, the Commission had no report before it on the topic, as the Special Rapporteur was no longer with the Commission. The Commission established a Working Group on the topic, chaired by Mr. August Reinisch, in order to consider the way forward in relation to the topic. Upon receiving the oral report of the Working Group, the Commission took note of the Working Group’s recommendations, *inter alia*, that the Commission should not proceed with the appointment of a new Special Rapporteur, and that the Working Group should be re-established at the seventy-fifth session with a view to undertaking further reflection, and making a recommendation, on the way forward for the topic.

As to the new topics on its agenda, with respect to “**Settlement of disputes to which international organizations are parties**”, the Commission had before it the first report of the Special Rapporteur, Mr. August Reinisch ([A/CN.4/756](#)), which examined previous work of the Commission relevant to the topic and of other international bodies; discussed the programme of work; and proposed two draft guidelines: one on the scope of the draft guidelines and the other on use of terms.

Following the debate in plenary, the Commission decided to refer draft guidelines 1 and 2 to the Drafting Committee, taking into account the debate and proposals made in plenary. The Commission considered the report of the Drafting Committee on guidelines 1 and 2, and provisionally adopted those draft guidelines together with the commentaries thereto.

The Commission also decided to change the title of the topic from “Settlement of international disputes to which international organizations are parties” to “Settlement of disputes to which international organizations are parties”.

With regard to the topic “**Prevention and repression of piracy and armed robbery at sea**”, the Commission had before it the first report of the Special Rapporteur, Mr. Yacouba Cissé ([A/CN.4/758](#)), which addressed the historical, socioeconomical and legal aspects of the topic, including an analysis of the international law applicable to piracy and armed robbery at sea, and its shortcomings; contained a review of the national legislation and judicial practice of States concerning the definition of piracy and the implementation of conventional and customary international law; discussed the programme of work; and proposed three draft articles: on the scope of the draft articles, on the definition of piracy, and on the definition of armed robbery at sea. The Commission also had before it the memorandum prepared by the Secretariat concerning the topic ([A/CN.4/757](#)).

Following the debate in plenary, the Commission decided to refer draft articles 1, 2 and 3, as contained in the fourth report of the Special Rapporteur, to the Drafting Committee, taking into account the comments made in plenary. The Commission considered the report of the Drafting Committee on articles 1, 2 and 3, and provisionally adopted those draft articles together with the commentaries thereto.

In connection with its work on the topic, the Commission considers as still relevant the request for information on the topic contained in chapter III of the report of its seventy-third session (2022) and would welcome any additional information, by 1 December 2023, concerning:

- (a) the legislation, case law and practice of States relevant to the topic, including in relation to articles 100 to 107 of the United Nations Convention on the Law of the Sea;
- (b) the agreements entered into by States under which persons accused of piracy or armed robbery at sea are transferred with a view to prosecution; and
- (c) the role of international, regional and subregional organizations regarding the prevention and repression of acts of piracy and armed robbery at sea.

With regard to the topic “**Subsidiary means for the determination of rules of international law**”, the Commission had before it the first report of the Special Rapporteur ([A/CN.4/760](#)), which addressed the scope of the topic and the main issues to be addressed in the course of the work of the Commission. The report also considered: the views of States on the topic; questions of methodology, which is to be grounded in State and international tribunal practice; the previous work of the Commission on the topic; the nature and function of sources of international law and their relationship to the subsidiary means; and the drafting history of Article 38, paragraph 1 (d), of the Statute of the International Court of Justice and its status under customary international law. It also provided an initial assessment of certain aspects of the topic, including judicial decisions, teachings of the most highly qualified publicists of the various nations and possible additional subsidiary means used in the practice of States and international tribunals to determine rules of international law, such as unilateral acts, resolutions and decisions of international organizations and the works of expert bodies. The Special Rapporteur addressed in his report the outcome of the work and, consistent with the related prior work of the Commission, proposed draft conclusions as the final form of output, with the main object of clarifying the law based on current practice. The report also contained proposals for five draft conclusions: on the scope of the conclusions, categories of subsidiary means for the determination of rules of law, criteria for the

assessment of subsidiary means for the determination of rules of law, decisions of courts and tribunals, and teachings.

In addition, the Commission had before it the memorandum prepared by the Secretariat, identifying elements in the previous work of the Commission that could be particularly relevant to the topic ([A/CN.4/759](#)).

Following the debate in plenary, the Commission decided to refer draft conclusions 1 to 5, as presented in the first report, to the Drafting Committee, taking into account the comments made in plenary. The Commission received and considered the report of the Drafting Committee on draft conclusions 1, 2 and 3, and provisionally adopted those draft conclusions, together with commentaries. Furthermore, the Commission took note of draft conclusion 4 and 5, which were contained in the additional report of the Drafting Committee.

As with the piracy topic, the Commission considers as still relevant the request for information on the topic contained in chapter III of the report of its seventy-third session (2022) and would also welcome any updates to information already submitted pursuant to such request, by 1 February 2024, concerning:

(a) decisions of national courts, legislation and any other relevant practice at the domestic level that draw upon judicial decisions and the teachings of the most highly qualified publicists of the various nations in the process of determination of rules of international law, namely: international conventions, whether general or particular; international custom, as evidence of a general practice accepted as law; and the general principles of law recognized by the community of nations;

(b) statements made in international organizations, international conferences and other forums, including pleadings before international courts and tribunals, concerning subsidiary means for the determination of rules of international law.

As for other activities that took place during the 74th session, in addition to continuing its traditional exchanges of information with the CAHDI, which I referred to before, we held meetings with representatives of the African Union Commission on International Law; the Asian-African Legal Consultative Organization; and the Inter-American Juridical Committee. An informal exchange of views was also held between members of the Commission and the International Committee of the Red Cross on matters of mutual interest. Furthermore, this year, Judge Joan E.

Donoghue, the President of the International Court of Justice, addressed the Commission in person on 18 July 2023.

Before I conclude my account today, allow me to also say a few words about the Commission's **future work** and its **methods of work**.

The re-established the Working Group on the Long-term Programme of Work, chaired by Marcelo Vázquez-Bermúdez, continued its consideration of proposals for new topics, including six new proposals introduced at the current session. All the proposals will remain within the Working Group until such time the Working Group is in a position to make a recommendation to the Commission. I recall there are currently nine topics that remain inscribed in the long-term programme of work from previous quinquennia.

This session, the Commission decided to include the topic “**Non-legally binding international agreements**” in its programme of work and to appoint Mr. Mathias Forteau as Special Rapporteur, whose first report is expected next year. The syllabus for this topic is contained in an annex I to the report of the Commission on the work of the seventy-third session (2022).

Relatedly, the Commission also decided to appoint Claudio Grossman Guiloff as Special Rapporteur for the topic “**Immunity of State officials from foreign criminal jurisdiction**” to replace Ms. Concepción Escobar Hernández, who was no longer with the Commission. At this session, the new Special Rapporteur held informal consultations on the topic. The Commission awaits comments and observations of Governments to resume consideration at its next session (2024). Bearing in mind the importance of the topic for States in international relations, the Commission can only reiterate the wish that it receives comments and observations on the topic from as many Governments as possible by 1 December 2023.

The Commission attaches great importance on improving its working methods. It re-established the Working Group on methods of work, under the leadership of Charles Chernor Jalloh. The Commission endorsed the recommendations of the Working Group that a new reporting practice be adopted whereby a brief summary of the Working Group's deliberations will be included in the Commission's annual report to the General Assembly. The Commission also requested the Secretariat to prepare a draft of an internal practice guide, handbook or manual to the working methods and procedures of the Commission.

Finally, the Commission decided that its seventy-fifth session next year would be held in Geneva from 15 April to 31 May and from 1 June to 2 August 2024. This will be a commemorative year. Accordingly, plans are afoot to convene during the first part of the session a solemn meeting of the Commission to which dignitaries, including the Secretary-General, the President of the General Assembly, the President of the International Court of Justice, the United Nations High Commissioner for Human Rights, and representatives of the host Government would be invited. This would be followed by one and a half days of meetings with legal advisers of Ministries of Foreign Affairs dedicated to the work of the Commission. The Commission invites CHADI's legal advisers to attend this commemorative session.

I also wish to note that, with the assistance of its Secretariat, the Commission has proceeded to undertake the necessary administrative and organizational arrangements to facilitate the holding of the first part of its seventy-seventh session (2026) in New York.

Let me conclude my presentation by reiterating the importance that the Commission attaches to its exchanges with the CAHDI. Experience has shown that we benefit greatly from each other's work and from our regular interactions. I would like to express my gratitude once more for being able to speak with you about the Commission's recent work.

Thank you for your attention.