



Foley Hoag Lecture Series Roundtable

Co-Sponsored by Permanent Missions of Portugal, Romania, and Italy to the United Nations

The ILC: Strategies for Effective State Engagement

October 26, 2023

8:30 - 8:45am: Welcome & Light Breakfast

8:45 - 9:45am: Discussion

Foley Hoag LLP
1301 Avenue of the Americas, New York, NY, Floor 25

[RSVP](#) to attend

Concept Note

Since 1947, the International Law Commission (“ILC” or “Commission”) has been tasked to initiate studies and make recommendations for the purpose of encouraging the progressive development and codification of international law. The working methods of the ILC’s process of consideration is broken down into three main stages, providing States and international organizations with the opportunity to present feedback on the provisional reports drafted by the Commission’s Special Rapporteurs until the adoption of the outcome of their work. This includes a preliminary stage, composed of organizing the work and gathering relevant materials and precedents; a first review of the draft articles submitted by the assigned Special Rapporteur; and a third and final stage devoting to a second reading and provisional adoption of the draft. Before adopting draft articles, principles, guidelines, or conclusions, the Commission considers the oral and written observations of Governments who choose to comment.

Neither the ILC’s findings nor the opinions of Governments alone constitute settled international law – rather, the correct interpretation of international law cannot take place without considering the ILC’s output together with the responses of governments. States’ behavior during and after the ILC’s working methods process helps determine whether the “offer of interpretation” of international law provided by the ILC is broadly accepted as international law.

The feedback process from States in the form of interventions, however, requires that State representatives effectively communicate their perspectives on international law to the ILC. Communication gaps between diplomats and the ILC can prevent successful dialogue, which takes into account the views of all States, including from the Least Developed Countries. And while States are not required to engage with the ILC, the decision *not*

to engage can in some circumstances carry legal weight; the Commission has, in the past, cited state silence as providing support for its findings.

Beyond the setting of draft articles, principles, guidelines and conclusions, the debate between the ILC and States matters in the choice of topics to be addressed by the ILC. Although the decision-process leading to the inclusion of topics to be explored by the ILC in its long-term program of work is a prerogative of the ILC, also in this regard the attitude of States towards the debate in the Commission could contribute to a meaningful cooperation between the ILC and State representatives in the future work of the former.

This roundtable discussion will consider strategies for effective State engagement with the working methods of the ILC. Current ILC members, in conversation with State representatives and academics, will share recommendations for States interested in providing impactful feedback on the Commission's draft reports and future works and consider the following questions:

- What opportunities are available for States interested in expanding their engagement with the ILC?
- What kinds of feedback and insight do ILC members find most useful from States in carrying out their mandates?
- What are the consequences of State engagement with the ILC, on the one hand, and State silence or non-engagement, on the other?
- How can States translate their overarching policy aims into specific commentary on the language and substance of draft ILC reports as well as in encouraging/discouraging the ILC in tackling certain new topics?
- What has effective engagement between the ILC and States looked like in the past?

Speakers:

- **Moderator:** [Christina Hioureas](#), Partner and Co-Chair of the [International Litigation and Arbitration Department](#), Foley Hoag LLP
- **Speakers:**
 - [Patrícia Galvão Teles](#), Chair, International Law Commission; Professor of International Law, Autonomous University of Lisbon; Senior Legal Consultant on International Law, Legal Department of the Portuguese Ministry of Foreign Affairs
 - [Giuseppe Nesi](#), Member, International Law Commission; Professor of International Law, University of Trento
 - [Bogdan Aurescu](#), Member, International Law Commission; Professor of Public Law, University of Bucharest; Former Minister of Foreign Affairs, Romania
 - [Danae Azaria](#), Associate Professor of International Law, University College London Faculty of Laws; Principal Investigator, European Research Council (ERC) Grant, [State Silence](#); Senior Global Hauser Fellow, NYU Law School (2023-2024)
 - [Eran Sthoeger](#), Attorney and Consultant in International Law; Adjunct Professor of Law, Brooklyn Law School