



**Statement on behalf of the European Union**

**By**

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**‘Work of the International Law Commission**

**- General principles of law’**

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**– CHECK AGAINST DELIVERY –**

Mr. President,

I have the honour to speak on behalf of the European Union.

Mr. President,

Let me first thank the Special Rapporteur, M. Marcelo Vázquez-Bermúdez, for his work on the topic on general principles of law. The quality of his three reports enabled the International Law Commission (ILC) to complete the set of draft conclusions on the topic during its last session.

The EU congratulates also the ILC for the significant progress made in the consideration of this important topic. The EU welcomes that during its last session the ILC adopted the draft conclusions and the commentaries to them on first reading. The EU also takes note that the ILC has decided to transmit the draft conclusions, through the Secretary-General of the UN for comments and observations to be submitted by 1 December 2024.

The EU has carefully reviewed the detailed reports of the Special Rapporteur, the 11 draft conclusions and the commentaries to them as adopted by the ILC on first reading. It is noted that they primarily build on the practice of States and international courts. Whilst the Special Rapporteur also announced the possibility to analyze the practice of international organizations “if considered relevant for the purpose of the present topic”, the reference to the EU practice has remained limited for the time being. As the sole example, the Special Rapporteur made reference to Article 340 of the Treaty on the Functioning of the European Union on extra-contractual liability, where principles recognized in EU Member States serve as a source of EU law. He considers that this provision may serve as an example of a “general principle with limited scope of application”, and announced that such principles may be addressed in a future report. For their part, the commentaries to the draft conclusions refer only once to practice of the Court of Justice of the European Union.

The European Union considers that its practice is indeed relevant for this exercise. It agrees with the Special Rapporteur that EU practice, which builds on and reflects the legal traditions of twenty-seven European States, may be an important reference point when identifying principles recognized by the community of nations.

It could therefore be useful to analyze the comparative methodology used by the Court of Justice of the EU under Article 340 TFEU, but not only, in identifying principles of the EU law derived from Member States' legal systems. In the process of identifying general principles of law, the EU practice could serve as a reference to determine how the methods of comparative law should be used in this context, in particular when an international judicial body is faced with the task of identifying general principles of international law.

In the same vein, the EU would like to draw the attention to Article 6(3) of the Treaty on European Union, which states that “*fundamental rights (...) as they result from the*

*constitutional traditions common to the member States, shall constitute general principles of the Union's law”.*

This illustrates that in the EU legal order, general principles that emanate from the legal systems of its Member States also constitute principles of EU law and constitute an autonomous source of law. This may inform the debate in the ILC about the existence of general principles of law originating in the international legal system.

Mr. President,

Before concluding, the EU would like to make some specific remarks on some of the draft conclusions and the commentaries to them.

The European Union notes that the **draft conclusion 2** refers to the recognition of the general principle of law by the “*community of nations*”. The same reference appears in draft conclusion 7 of the draft conclusion. The term “*community of nations*” replaces the term “*civilized nations*” found in Article

38 paragraph 1 c) of the Statute of the International Court of Justice. While the European Union can agree that the term “*civilized nations*” used by the Statute of the International Court of Justice may appear anachronistic, it considers that the new term “*community of nations*” does not seem to fully reflect the role which is played by international organisations as subjects of the international law. The European Union notes that, according to the point 5 of the commentary to the Conclusion 2, the use of the term “*community of nations*” does not preclude that “*in certain circumstances*” the international organisations may also contribute to the formation of the general principles of law. The commentary does not provide for further guidance in relation to the circumstances in which the international organisations could contribute to the existence of the general principles of law. As mentioned above, the EU recognizes general principles of law as an autonomous part of its legal order. In that sense, this specificity may serve as an illustration of an international organisation contributing to the formation of general principles of law. The European Union would thus welcome further reflections on the role of the international

organisations in the creation of the general principles of law and, if necessary to consider the use of the term “*the international community*”.

The European Union welcomes that **draft conclusion 4** specifies the two steps analysis necessary for the identification of the general principles of law derived from national legal systems. The European Union notes that the second step of the identification of the general principles refers to the “*transposition*” of the general principles of law derived from national legal systems to the international legal system. Point (6) of the commentary to the draft conclusion 4 indicates that the term “*transposition*” was preferred to “*transposability*” as the transposition necessary includes transposability. While the European Union can follow this reasoning, it would welcome the precision in the commentary that the term “*transposition*” should not be read as meaning that an *ex-ante* transposition would be required. In other terms and having in mind that the general principles of law could fill existing lacuna in the international law, it should be made clear that this requirement is to be understood as

meaning that the principle derived from national legal systems is susceptible to be transposed in the international legal system.

The European Union observes that **draft conclusions 4 and 5** require that the principles derived from national legal systems must be “*common to the various legal systems of the world*”. The European Union attributes great importance to the fact that the principle must be common to the legal systems which are as numerous and as representative as possible. For this reason, the European Union would welcome further clarification in this regard in the commentary.

The EU welcomes that the ILC has clarified that the term “*international courts and tribunals*” used in that Conclusion is “*intended to cover any international body exercising judicial powers that is called upon to consider general principles of law*” (paragraph 7 of the commentaries to **draft conclusion 8**). The decisions of the Court of Justice of the European Union should undoubtedly be considered as subsidiary means for the determination of general principles of law and



the EU invites once again the ILC to look at the jurisprudence of the Court of Justice of the European Union and to mention it in the commentaries to **draft conclusion 8**, as appropriate.

The European Union welcomes the specification of the function of the general principles of law provided for in the **draft conclusion 10**. According to paragraph 1, the general principles of law are “*mainly*” resorted to when other rules of international law do not resolve a particular issue in whole or in part. While the European Union shares the understanding that this wording reflects the tendency in practice and in doctrine, the European Union would prefer that the paragraph 1 is worded in the way which is fully coherent with the wording and spirit of Article 38 paragraph 1 of the Statute of the International Court of Justice which lists three sources of the international law without indication of any hierarchical relationship among them. Alternatively, the word “*mainly*” in paragraph 1 of draft conclusion 10 could also be deleted and the details contained in this paragraph could be moved to the commentary.

Mr. President,

The European Union will consider sharing with the International Law Commission additional observations in writing, information and material to be used during the further consideration of this topic, in order to continue contributing to the development of international law.

I thank you.

**Statement of the European Union and its Member States on Sea Level Rise in Relation to  
International Law**

**(UNGA 6th Committee, 78th session, 2023)**

Ms/Mr Chairperson,

1. The European Union and its Member States have the honour to address the 6th Committee on the topic of Sea-Level rise in relation to International Law, which was considered by the International Law Commission (ILC). The progress made on this topic is reflected in Chapter VIII of the 2023 ILC report.
2. The European Union and its Member States refer to the two issues papers and the additional paper, with a selected bibliography as an addendum (A/CN.4/761/Add.1), to the first issues paper which were presented in 2020, 2022 and 2023 by the Co-Chairs of the Study Group. They, set out the main legal issues of sea-level rise in relation to the United Nations Convention on the Law of the Sea and other relevant International Law instruments, and the issues related to statehood and the protection of persons affected by sea-level rise. The European Union would wish to congratulate the Co-Chairs, in particular, for the additional paper to the first issues paper.
3. As it has previously been stressed, the European Union and its Member States note the need to carefully consolidate results of the ILC work on all the legal aspects of sea-level rise which is to be undertaken with the expectation to issue a substantive report on the topic as a whole in 2025.
4. At this stage, the European Union and its Member States would like to draw the attention to five points, which they consider to be particularly relevant for the law of the sea aspects of the 2023 ILC report.
5. First, the European Union and its Member States would like to underline once more their resolute support for the integrity of the United Nations Convention on the Law of the Sea. This Convention is recognized as being the “Constitution for the oceans”. It has a central importance in the debate, as it reflects customary international law, such as the general obligation to protect and preserve the marine environment, including against pollution. The definition of “pollution of the marine environment” as set out in Article 1, paragraph 1, sub-paragraph 4, of UNCLOS is interpreted as including greenhouse gas emissions. As consistently reiterated in the annual General Assembly Resolution on Oceans and the Law of the Sea, the Convention sets out the

legal framework within which all activities in the oceans and seas must be carried out. Consequently, any solutions that might be proposed in the report of the ILC on the topic of sea-level rise need to be in line with and respect the legal framework established by the Convention.

6. Second, in particular with regards to paragraphs 158, 227 and 228 of the 2023 ILC report, the European Union and its Member States agree, as stated previously, that the Study Group's work should distinguish matters of policy from matters of international law in line with the mandate of the International Law Commission in general, and that its work should not propose any amendments to the United Nations Convention on the Law of the Sea, but rather be rooted within the existing international rules and their interpretation.
7. As previously stated, the European Union and its Member States would also caution regarding the consideration of regional State practices together with the respective *opinio juris* in this context, because universally applicable provisions and principles such as the United Nations Convention on the law of the Sea need to be applied in a uniform way in all regions of the world.
8. Therefore, certain possible emerging regional State practices regarding sea level rise should not lead to the recognition of a regional customary law of the sea rule, and the European Union and its Member States would encourage the Study Group to build on the State practice and consider the *opinio juris* accepted by all the regions of the world before inferring the existence (or not) of an established State practice or *opinio juris*.
9. Third, with regard to the key issues of the legal stability with a focus on baselines and maritime zones, and of the immutability and intangibility of boundaries, as discussed in points 140 to 170 of the 2023 ILC Report, the European Union and its Member States would acknowledge that sea-level rise threaten many low-lying States and islands, especially small island States, and their coastlines. While the principle that "land dominates the sea" is an underlying premise for the attribution of maritime zones, this does not, however, necessarily imply that coastal States would be legally obliged to periodically review and update their charts and coordinates they have drawn (or agreed) and duly published in accordance with the relevant provisions of UNCLOS.
10. In this context, the European Union and its Member States welcome the observations contained in paragraphs 140 and 141 of the 2023 ILC report that no State has contested the notion of legal stability and the preservation of maritime zones and that Member States had underlined the need to interpret the United Nations Convention on the Law of the Sea in such a way as to effectively address sea-level rise in order to provide practical guidance to affected States. The

European Union and its Member States also note with great satisfaction the further observation that an ever-increasing number of States had expressed the view that the UN Convention on the Law of the Sea did not forbid or exclude the option of fixing or freezing baselines and that in doing so, these States had stressed the importance of interpreting the Convention with a view to preserving maritime zones.

11. With respect to these fundamental points the European Union and its Member States can agree with the preliminary observations of the ILC Study Group and an increasing number of States that the Convention does not forbid or exclude the preservation of baselines and the outer limits of maritime zones in the context of climate change-induced sea-level rise once established and deposited with the Secretary-General in accordance with UNCLOS, as a legal way to ensure the preservation of maritime zones and their legal stability.
12. In the same vein, and as already stated last year, the European Union and its Member States reiterate that there is no express obligation under the Convention on States to periodically review and update all the charts on which straight baselines are shown and the list of geographical coordinates of the points from which straight baselines are drawn (or agreed) and duly published in accordance with the relevant provisions of the Convention, and that there are major legal and policy reasons to recognise the stability provided for by the maritime delimitations established either by treaty or by adjudication.
13. That stated, the precise way in which the Convention ought to be interpreted and how the objective of legal stability is to be secured legally and in practice may require careful consideration in the further work of the ILC and its Study Group, as well as the consideration and agreement of States.
14. In conclusion, the European Union and its Member States once again congratulate the ILC and the reconstituted Study Group for the excellent work done so far on a matter that is of very high importance for the international community as a whole. The European Union and its Member States look forward to further discussions on all aspects of this delicate issue account taken of the crucial role vested in the respect for the integrity of the United Nations Convention on the Law of the Sea.

Thank you for your attention.