



# **IRELAND**

**Sixth Committee**

**United Nations General Assembly 78<sup>th</sup> Session**

**Statement of Ireland on Agenda Item 79:**

**'Report of the International Law Commission on the work of its  
seventy-third and seventy-fourth sessions'**

**Cluster I – Chapters I-III, IV (General principles of law), VIII (Sea-  
level rise in relation to international law) and X (Other Decisions  
and Conclusions)'**

**Delivered by Declan Smyth**

**Legal Adviser, Department of Foreign Affairs**

*New York, 24 October 2023*

**– CHECK AGAINST DELIVERY –**

Mr / Madam Chair,

1. As this is my first time taking the floor in the Sixth Committee this year, I would like to express our pleasure in seeing you in the chair and assure you of Ireland's support for the work of the Bureau. I would also like to express Ireland's appreciation to the Chair and Members of the International Law Commission, as well as the Secretariat staff, for their work in the seventy-fourth session.
2. I will speak today on the topics of general principles of law and sea-level rise in relation to international law, and will also address the other decisions and conclusions of the Commission's Report.

### ***General Principles of Law***

3. On General Principles of Law, Ireland notes that the Commission completed its first reading of the draft conclusions in this session. I thank the Special Rapporteur, Mr Marcelo Vazquez-Bermudez, for his contribution on this topic since 2018, and I also note our appreciation for the work of the Drafting Committee. General principles of law is an important and complex topic and Ireland would like to see draft conclusions that help to bring clarity to it.
4. For these reasons, Ireland has taken a keen interest in this topic since it was first discussed by this Committee. We have made one point consistently in our remarks in this forum, which is that these draft conclusions and their commentaries must carefully delineate the scope of General Principles of Law as a source of international law. Last year, in particular, we questioned the inclusion of what has been described as the 'second category' of general principles, that is what the Commission refers to as 'general principles of law formed within the international legal system.'
5. Ireland has understood the purpose of the work of the Commission on this topic as intended to address 'general principles of law in the sense of Article 38, paragraph 1(c) of the Statute of the International Court of Justice.' In our view Article 38, paragraph 1(c) is limited to principles derived from national or municipal legal systems only, in particular private law principles of municipal jurisprudence in so far as they may be applicable to relations between States. These principles are intended to be applied by international courts and tribunals to fill gaps in

customary and conventional law. In that sense they are supplementary to the primary sources of international law, namely custom and treaty.

6. In our view what the present draft conclusions refer to as 'general principles of law formed within the international legal system' are in fact general principles of international law. Unlike general principles of law in the sense of Article 38(1)(c), general principles of international law are inferred or induced from conventional and customary rules of international law and many have also been reflected or restated in instruments intended to set basic standards of behaviour in relations between States. These include most prominently Article 2 of the United Nations Charter and the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. General principles of international law may also be derived from specific branches of international law, such as the law of the sea and international humanitarian law. Although these principles are also intended to fill gaps in the body of treaty and customary rules, their categorisation as general principles of international law, and not as general principles of law in the sense of Article 38(1)(c), is important because the latter are a supplementary, secondary source. In contrast, general principles of international law are – in Ireland's view – a primary source of international law. To treat them as if comprehended by Article 38(1)(c) – as the present draft conclusions appear to do – is likely to mislead and confuse, in our view. We note that there is a difference of opinion within the Commission itself on this issue and we ask the Commission, therefore, to consider it carefully before adopting final draft conclusions.
  
7. We welcome the Commission's invitation to submit comments and observations on the draft conclusions by December next year and we will take advantage of that opportunity to set out our position in more detail.

Mr / Madam Chair,

8. I will make three further brief points on this topic. First, we have consistently pointed out an anomaly between the English and French language versions of **draft conclusion 7**, which in English uses the term 'identification' in the title, and the verb 'to determine' in the body of the conclusion. In French 'détermination' and 'déterminer' are used respectively. We suggest mirroring the French version, to avoid confusion over the use of two different words in English.

9. Secondly, we express some hesitation about the use of the word ‘transposition’ in **draft conclusion 6**. The plain English meaning of this word is simply to move something. However, ‘transposition’ has a very specific meaning in EU law for instance (and perhaps in other municipal legal orders too), meaning the domestic legal measures necessary to give effect within the legal order to laws the source of which is external. As a general principle of law does not – and should not – require any specific measure to be given effect in international law, in our view the use of a different term here would be preferable, for example ‘reception’ or ‘absorption’.
10. Thirdly, and finally, we note an apparent contradiction between **draft conclusion 10** and **draft conclusion 11**. The first paragraph of draft conclusion 10 suggests that general principles of law have a *supplementary* function, resorted to when other sources of international law do not resolve an issue. This is also our view. The first paragraph of draft conclusion 11, however, states that general principles of law are not in a hierarchical relationship with treaties and customary international law. While Article 38(1) of the ICJ Statute does not expressly create a hierarchical relationship – nor is it exhaustive on the sources of international law – Ireland has always taken the view that custom and treaty are *primary sources* of international law while general principles of law in the sense of Article 38(1)(c) are a *supplementary source* (with judicial decisions and the teachings of the most highly qualified publicists being *subsidiary means* for determination of international law). The commentaries attempt to reconcile these draft conclusions 10 and 11, but in our view further consideration of their juxtaposition is necessary before finalisation.

### ***Sea-Level Rise***

11. I now turn to the topic of sea-level rise in relation to international law.
12. First, Ireland thanks the Co-Chairs, Professors Aurescu and Oral, and acknowledges their contribution to the work of the ILC on this topic, most recently their Additional Paper on issues related to law of the sea, which provides much food for thought.
13. It is evident from the Study Group’s consideration of this topic, and indeed from the contributions made in this debate, that the issue of sea-level rise is an increasingly important one that will affect all coastal states and will, among other consequences, have a significant impact on the lives of people living in coastal communities, in particular in small island

developing states. As an island state itself Ireland is acutely conscious of the potentially devastating consequences of sea-level rise.

14. Clearly sea-level rise raises complex law of the sea issues, as the Co-Chairs' work illustrates so well. The starting point for Ireland is to recognise that all states – quite reasonably – wish to preserve their existing maritime limits delineated in accordance with international law. The challenge we face is to develop a legal solution that preserves those limits while maintaining the integrity of the existing legal framework, in particular the Law of the Sea Convention.
15. As is now widely acknowledged, that Convention assumed stable sea levels. Such an assumption is no longer valid. Ireland agrees with others that we now need to make arrangements to ensure that baselines established in accordance with the Convention are to be regarded as permanently settled. Only such an arrangement can achieve the legal stability necessary to avoid conflict in the future while properly reflecting the principle of a state's permanent sovereignty over its natural resources, including the natural resources located within its duly delineated maritime limits.
16. In Ireland's view the absence from the Law of the Sea Convention of an express obligation on states to regularly resurvey *straight* baselines, or to deposit with the Secretary-General of the United Nations revised charts or lists of coordinates, is helpful in developing a pragmatic legal solution. The question of how to fix baselines *formed by the low-water line* along the coast is more problematic but even here Ireland believes that a pragmatic solution can be found.
17. Ireland has noted with interest suggestions that Article 7(2) of the Convention – which deals with the construction of straight baselines at river deltas – might be applied generally to sea-level rise as a 'natural condition'. However, there must be some concern that, given the wording of this provision, it can be applied only to coastlines in which river deltas are located.
18. A more promising alternative in our view is to draw on the precedents created by the two Decisions taken by the Meeting of States Parties to the Convention in 2001 and 2008 on the interpretation of its provisions relating to the work of the Commission on the Limits of the Continental Shelf. Specifically, these Decisions recorded an agreement between the States Parties to the Convention on the interpretation of Article 4 of Annex II of the Convention relating

to the ten-year deadline for the making of submissions to the Commission and to the content of any such submission, respectively.

19. In Ireland's view a similar model should be considered to address the challenge of preserving states' existing maritime limits in the face of rising sea-levels. A Decision of States Parties could decide for instance that, in consequence of rising sea-levels, the baselines established by a State Party in accordance with the Convention on the date on which it entered into force for that State are to be regarded as permanent. Given the absence of any obligation on States Parties to deposit details of baselines formed by the low-water line along the coast with the Secretary-General such a Decision could also interpret the Convention to clarify how such states can give due publicity to their normal baselines.
20. A Decision of the States Parties of this type would constitute a subsequent agreement between them regarding the interpretation of the Convention or the application of its provisions, as contemplated by Article 31(3)(a) of the Vienna Convention on the Law of Treaties. In Ireland's view this offers an effective and pragmatic solution to the problem of preserving both states' maritime limits in the context of rising sea-levels and the integrity of the Law of the Sea Convention. We look forward to the further work of the Commission on this pressing topic.

#### ***Other Decisions and Conclusions of the Commission***

21. To conclude, I would like briefly to address the other decisions and conclusions of the Commission during its seventy-fourth session.
22. We welcome the plans for the **commemoration of the seventy-fifth anniversary** of the Commission, and I look forward to participating in the meeting of Legal Advisers of Ministries of Foreign Affairs in Geneva next year.
23. We commend the progress made in catching up with the backlog of the **Yearbook of the International Law Commission** in recent years. The Yearbook is a valuable record of the workings of the Commission's sessions, and we were pleased to be able to make a voluntary contribution to the Trust Fund to address the backlog this year.

24. We note the report of the **International Law Seminar**, which took place in Geneva last summer. Ireland considers that this Seminar is integral to the promotion of international law broadly speaking, giving as it does the opportunity to young lawyers, particularly those from developing countries, to learn about the work of the Commission, as well as deepening their general understanding of international law. We commend the Members of the Commission for giving their valuable time to the Seminar each year. However, the Commission's report that the finances of the Seminar have been adversely affected is concerning, particularly with regards to the impact of this on the provision of stipends to participants. We encourage those states in a position to do so to consider making a voluntary contribution to the Seminar, as we have done, to ensure wide participation, including by young lawyers who could not afford to do so without financial assistance.

I thank you, Mr / Madam Chair.