



# CROATIA

Statement by

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on the work of its seventy-fourth session**

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- *Check against delivery* -

Mr. Chair, distinguished colleagues,

At the outset, let me welcome the members of the Bureau and the Chair and Members of the International Law Commission and thank them for their presence at this session as well as for the very informative introduction and presentation of this year's report of the Commission.

The main focus of our intervention on this occasion is on the following topics of the ILC Report – “General principles of law”, “Sea-level rise in relation to international law”, “Settlement of disputes to which international organizations are parties” and “Succession of States in respect of State responsibility”.

### **[General principles of law]**

Mr. Chair,

As regards the topic “General principles of law” we would like to thank the Special Rapporteur Mr. Marcelo Vázquez-Bermúdez for his three reports and we also welcome the engaged discussions in the Commission on this topic.

As we stated in our last year’s statement, we support the view of members of the Commission who advocate for a more cautious approach when discussing issues related to the contentious category of general principles of law formed within the international legal system, bearing in mind that the general approach of international legal scholars is that the general principles of law cannot be directly formed within the international legal system. In our view, additional efforts must be invested to further examine, elaborate and clarify remaining issues relating to this particular category with an aim to get a clear distinction between general principles of law and other sources of international law, especially in relation to customary law, which still is not the case now.

In this regard, in our view the formulation of the draft conclusion 7, paragraph 2 is still unclear and requires further consideration especially in relation to what “other general principles of law” would refer to. It is important to clearly determine the elements necessary for the recognition of general principles formed within the international legal system.

In addition, it seems to us that additional clarifications are also needed in order to avoid a wrong conclusion that there are no differences between general principles of law and customary law.

Furthermore, having in mind that Conclusion 8 defines that the decisions of international courts and tribunals, in particular of the International Court of Justice, concerning the existence and content of general principles of law are a subsidiary means for the determination of such principles, we would like to reiterate that impartiality and independence of adjudication mechanisms are crucial general principles of law and a fundamental element of the rule of law, both on national and international level.

In conclusion, when it comes to the draft conclusion 10, although it rightly demonstrates the situation in practise, however its formulation could lead to a incorrect conclusion that subsidiarity of the general principles of law in relation to treaties and international customary law is based on the principle of hierarchy, instead on the principle of speciality. In this regard, I take this opportunity to reiterate Croatia's view that having in mind that general principles of law are *lex generalis*, they tend to be applied rarely in comparison to treaties and customary international law which are *lex specialis*, so there is no hierarchy between general principles of law but rather speciality. Otherwise, general principles of law would be included in subparagraph (d), paragraph 1 of Article 38 of the Statute of the ICJ.

### **[Sea-level rise in relation to international law]**

Mr. Chair,

I would like to turn now to the topic of "Sea-level rise in relation to international law".

Let me start by thanking the co-Chairs of the Study Group for the Additional paper to the first issue paper and for the efforts they have invested so far in dealing with this important issue. We hope that the recently adopted BBNJ Agreement under the UNCLOS, together and in conjunction with other relevant environmental

international instruments, would contribute to better address and deal with the serious impacts of climate change, including sea-level rise, we are witnessing more and more often. Two advisory opinions on climate change still pending before the ITLOS and the ICJ demonstrate the importance of this issue which has enormous impacts on the future of our planet.

We note with interest the reference to the right of self-determination as it is suggested in paragraph 170 of the Report. It is mentioned that “[it] was observed that the principle of self-determination implied that State should not lose their right to territorial integrity as a result of sea-level rise.” In this regard we find it important to emphasise that the principle of self-determination is attributable to the people, and not to the States to which the principle of statehood is applicable. Furthermore, we believe that the Commission should further examine and clarify how and where the affected population could exercise the principle of self-determination in relation to sea-level rise, but at the same time we advocate for a very cautious approach since State practice and *opinio iuris* are non-existent.

Croatia looks forward to the continuation of discussions on this important topic within the Commission.

### **[Settlement of disputes to which international organizations are parties]**

Mr. Chair,

Allow me to turn to the topic “Settlement of disputes to which international organizations are parties”. We congratulate prof. August Reinisch for the appointment as a Special Rapporteur for this topic, who we greatly appreciate for his enormous knowledge and rich experience in dealing with different legal aspects related to international organizations. Since the examination and discussions on this topic are at the very beginning, we commend the first report which we find as a solid base for further elaborations on this issue, which will be very demanding and could put additional challenges before the Commission in its coming sessions, having in mind the broad scope of disputes addressed in the report which are not limited only to those regulated with international law.

At this phase, in order to be more precise, we would suggest a slight amendment in the definition of the term “international organization” which consists in adding the word “sovereign” in draft Guidelines 2 (a) between the words “other” and “entities”. We are convinced that this addition would further improve the text in

order to defer the international organizations from other international bodies and entities and other subjects of international law.

We are looking forwards to the further elaborations related to this topic.

**[Succession of States in respect of State responsibility]**

Mr. Chair,

As regards the topic of “Succession of States in respect of State responsibility”, Croatia highly appreciates the significance that the ILC has given to this issue so far. In this regard, we took note of the recommendations of the established Working Group, chaired by professor Reinisch, related to exploring the possible ways forward for this topic. This topic is of particular interest for Croatia due to its own experience, especially having in mind that, unfortunately, even after more than 30 years from the dissolution of the former SFRY, the Agreement on succession issues concluded in 2001 between five successor States of the former SFRY has not been fully implemented yet. In this regard, we hope that the Commission will continue to further elaborate this topic in its forthcoming sessions.

Mr. Chair,

Let me conclude by emphasizing once again the great importance that Croatia attaches to the role and work of the Commission and we are looking forward to continued engagement in further debates in the Sixth Committee.

I thank you for your attention.