



**PERMANENT MISSION OF THE REPUBLIC OF  
SIERRA LEONE TO THE UNITED NATIONS  
336 East 45<sup>th</sup> Street, New York NY 10017**

**Statement**

by

**Ms. Hawanatu Kebe**  
First Secretary

at the 78<sup>th</sup> Session of the United Nations General Assembly

Agenda item 79:  
**“Report of the International Law Commission on the work of its  
seventy-third session”**

*Consideration of the First Cluster of Chapters of the ILC Report: I, II, III,  
IV (General principles of law), VIII (Sea-level rise in relation to  
international law) and X (Other Decisions and Conclusions)*

New York, 27th October 2023

*Check Against Delivery*

## Chair,

1. The delegation of Sierra Leone welcomes the debate on agenda item: "*Report of the International Law Commission on the work of its seventy-fourth session*", being the first session in this present quinquennium.
2. We also welcome to New York members of the International Law Commission ("Commission" or "ILC"), and legal advisers from capitals to this year's International Law Week. It is a delight to see the continuation of the rich tradition of extensive engagement between the Sixth Committee, legal advisers, and members of the Commission.
3. Sierra Leone aligns this statement with the statement delivered on behalf of the African Group.
4. We thank the glass-ceiling breaking Co-Chairs of the Commission for its 74<sup>th</sup> session, **Professor Nilüfer Oral** and **Professor Patrícia Galvão Teles** for their conduct of the Commission's work in this historic session, as well as for introducing the report on the work of the Commission contained in document **A/78/10**.
5. Last session my delegation was delighted to see the simultaneous leadership role of the African Chairs of the ILC and the Sixth Committee. As one of the delegations that have provided critical leadership on gender issues at the General Assembly, we are pleased that the Commission agreed to electing two-chairs. And, by so doing, elected the historic first female Co-Chairs, this being the second time the Commission is chaired by female members.
6. Sierra Leone congratulates the Commission on the progress made on the various topics discussed in the report. We thank the Codification Division of the Office of the Legal Affairs for their

excellent Secretariat work for both the Commission and the Sixth Committee, as well as for the extended briefings in September of Sixth Committee delegates on the work of the ILC's 74<sup>th</sup> session.

7. The two separate briefings by the special rapporteurs of the Commission and co-Chairs of the Study Group on Sea-level Rise are also appreciated. We join the African Group and fully support continuation of this practice, as it enhances the interaction between the Sixth Committee and the Commission.

**Chair,**

8. In this difficult moment, when multilateralism and universality in international law-making, as well as consistency in the application and enforcement of international law is under tremendous stress, Sierra Leone reaffirms the importance we attach to the mandate of the Commission in assisting the General Assembly in initiating studies and making recommendations for the purpose of promoting the "progressive development of international law and its codification" as set out in the Commission's 1947 Statute, derived from article 13 (1) (a) of the United Nations Charter.
9. We also reiterate and re-echo the view of the African Group in that the process of progressive development and codification of international law must always be inclusive and all-embracing in the consideration of law texts, State practice, precedents and doctrines as required by the ILC Statute. Efforts in that regard ought to also draw inspiration from the main principal legal systems of our contemporary and pluralistic world, including African sources and principles as they relate to international law.
10. Sierra Leone's continued active engagement with the work of the Commission, despite the pronounced challenges for small delegations, is to ensure these important objectives are duly

realised. Sierra Leone remains committed to multilateralism and the rules-based international legal order. We value the effective contribution of the Commission in maintaining this multilateral system, with due consideration given to the views of all member States.

**Chair,**

11. The 2023 report clearly demonstrates that the Commission was very busy and productive, in its first fully in-person meetings since the COVID-19 pandemic, with the consideration of seven (7) substantive topics on its current agenda, with significant progress made on the topics: General principles of law; Subsidiary means for the determination of rules of international law; Prevention and repression of piracy and armed robbery at sea; and Settlement of disputes to which international organizations are parties, as well as on the work of the Study-Group on sea level rise in relation to international law.
12. On the topics for consideration in this first cluster of our debate, allow me Chair, to share some specific points. Regarding the topic "**General principles of law**", my delegation welcomes the Commission's adoption, on first reading, of 11 draft Conclusions on general principles of law, together with commentaries thereto. We take note of the decision of the Commission 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.
13. As this topic continues the Commission's recent work on the sources of international law, we are pleased to see that draft **Conclusion 1 (Scope)**, is clear and requires no further comments or revision at this stage in our view.

14. Draft **Conclusion 2 (Recognition)** addresses the conditions under which a general principle is to be recognized providing that, “*For a general principle of law to exist, it must be recognized by the community of nations*”. Sierra Leone welcomes the reference to “community of nations”, transplanted from Article 15(2) of the International Covenant on Civil and Political Rights, and replacing the anachronistic term “civilized nations” in Article 38(1)(c) of the ICJ Statute. In the changed landscape of international law, and at the United Nations, efforts must be made to replace anachronistic and non-neutral gender terminologies.
15. We have made the point that outdated colonial era terms like ‘civilized nations’, no longer have a place in a pluralistic world comprised of equal sovereign States. Sierra Leone here welcomes the view of ICJ President Donoghue in the informal legal advisers meeting of the Sixth Commit supporting amendments to the ICJ Statute to update the anachronistic civilized nations language. We make the additional point that in the evaluation of general principles of law, account ought to be taken of the legislation and practice of African States and their legal systems which are often underrepresented in international law discourse.
16. Further, in order for recognition to take place, in relation to general principles of law, such recognition can only take place when it includes norms also accepted in and by African legal systems. This is connected to the first category of general principles (those derived from the national level), to signify the importance and ensure that a wide and representative evaluation of national legal systems are undertaken.
17. Moving on to draft **Conclusion 3 (Categories of general principles of law)**, we welcome the confirmation that general principles of law may be derived from national legal systems. We

take note that the Commission determined that general principles may be formed within the international legal system, although not without controversy. The use of “may” is therefore pragmatic and understandable.

18. Draft **Conclusion 4 (Identification of general principles of law derived from national legal systems)**, which speaks to an uncontroversial category, we note, spells out the objective two-step process for identification of general principles of law derived from national legal systems, which we fully agree with. Under the two-step process, we note that, one must, first, identify the existence and content of a general principle of law derived from various legal systems of the world, and second, having ascertained the existence of a principle that is common to the various legal systems of the world, engage in an assessment whether it is capable of “transposition” to the international legal system.
19. Transposition, we also note, is a process aimed at establishing whether, and if so to what extent, a principle common to the various legal systems can be applied in the international legal system. This certainly leaves open the possibility that a principle may be found to exist, at the national level, but in practice be unsuitable for application in the international legal system. This is the part where we emphasize the need for the process to take account of the diversity in the reference to a principle being common to the various legal systems.
20. Draft **Conclusions 5 (Determination of the existence of a principle common to the various legal systems of the world)** and **6 (Determination of transposition to the international legal system)**, we note, address in greater detail the two-step process for the identification of general principles of law derived from national legal systems, as discussed in draft Conclusion 4. We welcome the comparative analysis of national legal systems approach, which

must be wide and representative, including different regions of the world. We note critically the double conditions under which transposition of a general principle derived from national legal systems may take place in draft Conclusion 6.

21. The adoption of draft **Conclusions 7 (Identification of general principles of law formed within the international legal system)**, even with the controversy, the Commission was able to adopt the permissive provision stating that: *“To determine the existence and content of a general principle of law that may be formed within the international legal system, it is necessary to ascertain that the community of nations has recognised the principle as intrinsic to the international legal system”*.

22. Paragraph 1, we note, “is without prejudice to the question of the possible existence of other general principles of law formed within the international legal system”.

23. The key requirement of the principle is “intrinsic” to the international system has been justified by the Commission on the basis of the proposition being supported by judicial and State practice; the necessity of the international legal system to be able to generate general principles specific to itself, like any other legal system; and non-limitation in article 38(1)(c) or the drafting history to limit general principles to those derived only from national legal systems. My delegation, however, can only support this approach when the specific general principle embraces the current diversity and pluralism in contemporary international law landscape. My delegation, for example, can lend support to the principle of sovereign equality of States, as one such principles.

24. As Sierra Leone looks forward to commenting on the work of the Commission on this topic “**General principles of law**”, we pay tribute to the Special Rapporteur, **Ambassador Marcelo Vazquez-**

**Bermudez**, and the Commission in its previous as well as current composition for the overall excellence of the work done so far.

**Chair,**

25. I will now move on to the topic: **Sea-level rise in relation to international law**, and thank the Commission, the Co-Chairs in particular, the two Co-Chairs on issues related to the law of the sea, namely **Professor Bogdan Aurescu**, and **Professor Nilüfer Oral** for the important work on an issue of high relevance to member States. We welcome the high degree of interest of the members of the Commission with the Study Group comprised of 32 members this session, and the time allocated to its meetings, totalling 12.

26. We take note of the sub-topics discussed in the meetings of the Study Group, namely: Issue of “legal stability” in relation to sea-level rise, with a focus on baselines and maritime zones; Immutability and intangibility of boundaries; Fundamental change of circumstances (*rebus sic stantibus*); Effects of the potential situation whereby overlapping areas of the exclusive economic zones of opposite coastal States, delimited by bilateral agreement, no longer overlap, and the issue of objective regimes; effects of the situation whereby an agreed land boundary terminus ends up being located out at sea; judgment of the International Court of Justice in the Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (*Costa Rica v. Nicaragua*) case; Principle that “the land dominates the sea”; Historic waters, title and rights; Equity; Permanent sovereignty over natural resources; Possible loss or gain by third States; Nautical charts and their relationship to baselines, maritime boundaries and the safety of navigation; and Relevance of other sources of law.

27. Regarding the Study Group’s critical discussion of its working methods, we welcome the consideration given to having a clearer



road map to meet the expectations of States, including in determining the form and content of the Study Group's final report. Consideration of concrete solutions to the practical problems caused by sea-level rise should offer practical guidance to States and further reflect the responsiveness of the Commission.

28. As to the eventual product(s) of the Commission, my delegation at this stage will suggest a case-by-case examination of the sub-topics in the determination by the Commission. We welcome the suggested preparation of an interpretative declaration on the United Nations Convention on the Law of the Sea, which could serve as a basis for future negotiations between States Parties as appropriate. This may be the case to address the issue of "Issue of "legal stability" in relation to sea-level rise, with a focus on baselines and maritime zones. On the basis of solidarity, Sierra Leone also welcomes the important stress placed on exploring the issue of submerged territories, which we believe was not raised in 2021.

29. We agree on the need for the Commission's work on the topic to guarantee the sovereign rights of States over their maritime spaces. The Commission is invited to take a balanced approach to progressive development, as may be necessary in certain aspects of this topic, and also to work within the existing international rules. We also invite the Commission to take into account the work of other bodies, framed by the objective of responding to the needs of member States.

**Chair,**

30. Finally, I will now move on to "**Other Decisions and Conclusions of the Commission**". We take note with interest the Commission's decision to include the topic "non-legally binding international agreements" in its current agenda and to appoint **Professor Mathias Forteau** as Special Rapporteur, whom we congratulate

warmly. This study of this topic will help clarify an area of interest to States.

31. We note that there are now 9 topics in the current agenda of the Commission. My delegation appreciating the internal process, including the staggering of topics and independence of the Commission, will highlight topics of significant interest that are still in the long-term programme of work that should be considered for addition to the current agenda – taking into account the implications on the workload of the Commission and the Sixth Committee. One such topic, which has generated considerable interest also among other States, is “Universal criminal jurisdiction”. Sierra Leone in the “Universal jurisdiction” debate in the Sixth Committee, in making this call, further expressed deep interest in the codification of the universal jurisdiction practice on the important issue of ensuring accountability for sexual and gender-based crimes. This is to address a critical gap in the exercise of jurisdictions or lack thereof on sexual and gender-based crimes. Paragraph 2 of General Assembly resolution 77/111 provides sufficient mandate for the Commission to take on this invitation.
32. In closing, **Chair**, Sierra Leone uses this opportunity to highlight and welcome progress on other aspects of the work of the Commission. We welcome the re-establishment of the Planning Group to consider its programme, procedures and working methods, and the re-establishment of the Working Group on the long-term programme of work, chaired by **Ambassador Marcelo Vázquez-Bermúdez**, and the Working Group on methods of work, chaired by **Professor Charles Chernor Jalloh**.
33. We particularly welcome the reconstitution of the Working Group on methods of work of the Commission, and the election of **Professor Charles Chernor Jalloh** as Chair. My delegation sees great merit in having a standing agenda for the five-year period which will guide the work. As part of this, we consider that it is vital to have

a manual on the internal working procedures of the Commission to provide consistency and predictability in decision making. We support the Working Group developing rules of procedure to improve the method of work of the Commission. These should include the simplification of the Commission's report, which had been requested by the African Group previously. We particularly welcome the endorsement of the recommendations of the Working Group that a new reporting practice be adopted whereby a summary of the Working Group's deliberations will be included in the Commission's annual report to the General Assembly.

34. Finally, we support the call for contributions to the trust fund established pursuant to paragraph 37 of General Assembly resolution 77/103 of 7 December 2022, to provide assistance to Special Rapporteurs of the Commission or Chairs of its Study Groups. This is a significant initiative which, in our view, will assist in addressing structural issues that may disadvantage members of the Commission, in particular African and other Global South members, who may wish to become Special Rapporteurs. Sierra Leone fully supports the Trust Fund and will therefore contribute to the fund, to signify our commitment to the work of the ILC and the issue of diversity and promoting equal opportunity to contribute to the work of the Commission and the development of international law.

35. Sierra Leone welcome plans for the holding of the 75<sup>th</sup> anniversary of the Commission and calls for diversity in the commemorative events.

36. I thank you.