



**Statement by H.E. Archbishop Gabriele Caccia  
Apostolic Nuncio and Permanent Observer of the Holy See  
UNGA 78 – Sixth Committee  
Agenda item 79: Report of the International Law Commission  
Cluster I - General principles of law and Sea-level rise in relation  
to international law  
New York, 27 October 2023**

Mr. Chair,

At the outset, my Delegation would like to express its continuing appreciation for the work of the International Law Commission and wishes to thank its members for their contribution. My Delegation is also grateful for this year's Report.

Mr. Chair,

Allow me first to address the topic of “General Principles of Law”. My Delegation notes the Commission's efforts to clarify the appropriate methodology for determining the existence of single principles of law and for determining their concrete content. However, my Delegation would advise caution in promoting an approach that at times appears to place undue emphasis on the empirical analysis of State practice and judicial decisions. In fact, when referring to a general principle of law, one may be indicating one of three categories of norms:

- first, the fundamental principles that establish the basic and structural tenets of the international community, such as the principles of the sovereign equality of States and *pacta sunt servanda*;
- second, the hermeneutical rules and judicial maxims that assist in the proper interpretation and application of substantive norms, such as the principles of *lex posteriori* and *iura novit curia*;
- third, the general principles distilled from international customary law, such as the principle of *non-refoulement*, which are broadly shared but which, at heart, reflect policy choices.

Neither the first category, which pertains to the broad rules regarding the structure of international society, nor the second category, which relates to hermeneutical rules, have been identified through an analytical study of State practice. Rather, they have been

derived, through deductive reasoning, from the very structure of the international community and from the nature of a self-contained, well-functioning legal system. At their core, they reflect the intrinsic nature of Law itself. Consequently, any approach that seeks to identify general principles solely through empirical means runs the risk of reducing the principles to nothing more than a form of customary law, denying them their intrinsic normative value, based on reason and Natural Law.

The diverse nature of the various legal principles also affects the drafting of conclusion 10, on their “functions”. Indeed, the function of a principle such as the sovereign equality among States, that establishes the basis structure of the international community, is vastly different from that of a judicial rule such as the *compétence de la compétence*. While the later are invoked only when no other rules are available, as rightly noted in paragraph 1 of conclusion 10, the former – those principles of an almost constitutional nature – underpin the entire application of international law.

The same issue arises with regard to conclusion 11, concerning the hierarchy of the sources of law. While it is true that there is no hierarchy between the various sources, when considered in abstract, as noted in paragraph 1 of conclusion 11, it is also true that there are some principles which have a higher normative value, either because they constitute peremptory norms of international law or because they enunciate basic features of the Westphalian system. From this perspective, the draft requires greater attention to the actual substance of the principles in question.

Regarding conclusion 2, my Delegation welcomes the substitution of the anachronistic term “civilized nations” with that of the “community of nations”. This change underscores the sovereign equality of all States, as recognized by the Charter of the United Nations. At the same time, my Delegation notes the concerns of some delegations about the use of the term “nations” and therefore would suggest instead the term “the international community as a whole”.

Mr. Chair,

My Delegation also welcomes the Commission’s work on sea-level rise in relation to international law. The growing urgency of this issue is evident, as rising sea levels threaten about a quarter of humankind, affecting the habitability of low-lying regions and even the existence of entire States.

The legal and technical aspects of sea-level rise are complex, and the intricacies of identifying effective solutions underscore the pressing need for decisive international

action. As it is mentioned in paragraph 138 of the Report, sea-level rise has led to the emergence of new concepts, such as “climate displacement”, “climate refugees” and “climate statelessness”, which have not yet been defined in international law. However, ensuring the protection of affected persons requires greater conceptual clarity. This is crucial to address effectively the unique challenges posed by climate-induced displacement, and to enable more targeted and comprehensive legal responses to safeguard the rights of those impacted by environmental change.

My Delegation encourages the Commission to continue its analysis of the potential relevance of other sources of law, as set out in paragraph 220 of the Report. Developing the potential legal solutions to the challenges posed by sea-level rise on the bases of existing foundations would not only enable easier assessment of their impact, but would also promote greater consistency and uniformity within international law. In this sense, my Delegation is convinced, as already explained last year, that the provisions of Refugee law could provide a useful model for the development of new norms for the protection of those affected by rising sea levels, including the recognition of their right to request asylum, the applicability of the principle of *non-refoulement* and the right not to be punished for the illegal entry.

Finally, my Delegation welcomes the Study Group’s discussion on the principle of permanent sovereignty over natural resources. We look forward to the future work of the Study Group on the subtopics of statehood and the protection of persons in 2024, as well as the final substantive report to be issued in 2025.

Thank you, Mr. Chair.