

**Statement on behalf of
Denmark, Finland, Iceland, Sweden and Norway
78th Session
of the General Assembly of the United Nations**

6th Committee

Agenda item 79:

**Report of the International Law Commission on the
work of its seventy-third and seventy-fourth session
(Cluster I)**

**Delivered by: Under-Secretary of State for Legal
Affairs, Denmark**

New York

23 October 2023

Mr. Chair,

I have the honour to speak on behalf of the five Nordic countries - Finland, Iceland, Norway, Sweden - and my own country - Denmark. Before I comment on the topics covered in Cluster I of the report, we would like to use this opportunity to also make some general remarks regarding chapters I, II, III and X of the Report.

First, we want to reiterate our deep appreciation of the work of the International Law Commission and the Commission's contribution to the progressive development and codification of international law in accordance with its mandate. We welcome the Commission's Report on the work of its seventy-fourth session.

The new Commission

the topics currently under consideration, and the Nordic countries will make every effort to provide the Commission with relevant information, where available, and encourage other States to do the same. We feel that this year it is particularly important that states provide comments on the draft articles on immunity of states from foreign criminal jurisdiction that are due by 1 December 2023. We look forward to the successful completion of the work of the Commission on this topic under the leadership of Professor Claudio Grossman, the new Special Rapporteur, and thank Professor Concepción Escobar Hernández for the progress achieved during her term as the Special Rapporteur on the topic.

Mr Chair,

I will now turn to the topic of "General principles of law".

On behalf of the Nordic countries, I would like to congratulate the International Law Commission for having adopted the draft conclusions on general principles of law and commentaries thereto on first reading. I would also like to thank the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, for his diligent work on the topic that complements the Commission's earlier work on the primary sources of international law.

Overall, the Nordic countries subscribe to the general approach of the Special Rapporteur. We would like to recall our previous statements on this topic, where we have stated among other things that a cautious approach is warranted given the significance of the topic and the many sensitivities at play.

The Nordic countries would like to provide the following comments at this point. We also intend to respond to the Commission's request for written comments and observations on the first reading result on this topic by 1 December 2024.

First of all, we commend the thoroughness of the Special Rapporteur's work and the broad

the importance that the conclusions drawn are adequately related to the practice and opinion of States, and that the work on this topic avoids an overreliance on subsidiary means for the determination of law, in the form of judicial decisions and the opinions of individual writers.

The Nordic countries agree that there is no formal hierarchy between the primary sources of international law. However, we must also stress that general principles of law in practice play a subsidiary role, mainly as a means of interpretation, filling gaps or avoiding situations of non liquet. The ICJ has only rarely referred explicitly to principles of international law and, primarily, in the context of procedural obligations rather than substantive law

the identification of general principles derived from national legal systems, enshrined in draft conclusions 4, 5 and 6. We note the importance of the second criterion in draft conclusion 4, namely that the principle derived from national legal systems must be transposable to the international legal system.

Moreover, we agree that general principles of law may also emanate directly from the international legal system, as highlighted by draft conclusion 7. We do, however, consider that there is a certain inconsistency between the formulations in paragraphs 1 and 2 of the latter draft conclusion. Paragraph 1 proposes as a condition for the determination of a general principle of law that the community of nations has recognized the principle as intrinsic to the international legal system. Paragraph 2, on the other hand, envisions a possible existence of general principles of law formed within the international legal system

identified in draft conclusion 10, paragraph 2, letter a and b, in the commentaries, rather than identifying them in the text of a draft conclusion, as these traits are common to all primary sources.

The Nordic countries also welcome the proposed structure and formulation of draft conclusion 11. We believe that this offers an accurate reflection of the basic interplay between general principles of law and the other primary sources of law, namely treaties and customary international law. Considering the residual role of general principles referred to earlier in our statement, and the fact that the primary sources are, in fact, commonly operationalized in successive order, we would prefer if this were better reflected in this

The season during June to August 2023 was the hottest on record. Glaciers in the Arctic and elsewhere are melting. There is no denying the scientific fact that sea level rise is taking place and it will change the world as we know it. Humanity has to mitigate and adapt to this new reality, and that includes finding appropriate solutions in the realm of international law. Finding workable solutions is the joint responsibility of all states, and certainly not only the responsibility of those that will be hardest hit. It is well known that among those facing the most serious consequences of sea-level rise are those who call Small Island Developing States, low-lying atolls and coastal zones their home. Responses such as the Rising Nations Initiative and the Coalition on Addressing Sea

was conveyed in a more general context focusing on the

In its work, the Commission should be mindful of legal implications of potential changes to the natural environment, other than those caused by sea-level rise. The formation of new islands due to underwater volcanic eruptions, for example, can also change baselines and the outer limits of maritime zones. To be crystal clear, examples like this one could, of course, not apply to human-made changes to the natural environment, as that would be inconsistent with the Convention.

In terms of practical solutions, the Nordics strongly agree that amending the United Nations Convention on the Law of the Sea, is, to cite the report, "difficult". Indeed, it would not be advisable to engage in such a process which in any case would not be helpful in terms of resolving the challenges at hand and in time. Keeping in mind the internal balance, as well as the universal and unified character of the Convention, which sets out the legal framework within which all activities in the oceans and seas must be carried out, this option should not be the focus of further work of the Commission. That said, while it is too early to take an affirmative position, the Nordics do not exclude that joint interpretive declarations or other common international legal instruments could be a way of addressing the issue of sea-level rise.

Mr. Chair.

The Co-Chairs have emphasized the importance of further exploring the issue of submerged territories, which is related to both the law of the sea and to statehood. The Nordics support further exploration of this issue, as well as of the principle of self-determination in the context of sea-level rise, to be addressed by the Study Group in 2024.

Lastly and importantly, regarding future work of the Study Group, prioritization of issues for the Commission to address in its final report two years from now, would be recommendable. We are looking forward to further engaging with the members of the ILC and other colleagues over the next two years.