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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION

REPORT ON MATTERS RELATING TO THE WORK OF THE INTERNATIONAL LAW COMMISSION AT ITS SEVENTY-SEVENTH SESSION

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I. REPORT ON MATTERS RELATING TO THE WORK OF THE INTERNATIONAL LAW COMMISSION AT ITS SEVENTY-SEVENTH SESSION

A. Background

1. Article 1(d) of the Statutes of AALCO mandates the Organization to examine the topics under consideration by the International Law Commission (ILC or Commission), consider its reports and forward the views of the Member States to it. Over the years while carrying out this mandate AALCO Member States have made notable contributions to the codification and progressive development of international law while fostering a close working relationship with the Commission.

2. It has now become a convention that members of the Commission address the Annual Sessions of AALCO often providing updates on the ongoing work of the Commission and allowing an insight into their thoughts on matters on the agenda of the Commission. In a similar fashion it also a long-standing practice that the Secretary-General of AALCO attends sessions of the Commission and delivers an address representing the views of AALCO Member States on topics on the agenda of the Commission.

3. Members of the Commission have expressed support for this initiative and appreciated that this continuous exchange enriches their work informing it with perspectives from Asian-African States on topics under deliberation.

4. AALCO's Secretariat brief on the "Report on Matters Relating to the Work of the International Law Commission at its seventy-seventh session" covers (i) the work of the Commission on the substantive topics on its agenda at its most recent session, (ii) discussions on the topic at the previous Annual Session of AALCO, (iii) the comments and observations of the AALCO Secretariat.

5. The seventy-seventh session (2026) of the Commission was held from (27 April–5 June and 29 June–30 July 2026) and the final report to the UN General Assembly was made available on 14 September 2026 on the official website of the Commission. To keep the Member States informed about the Commission's most recent work and facilitate deliberations, the Secretariat has relied on the most recent report of the Commission on the work of its seventy-seventh session (2026).

6. The present document (AALCO/64/NEW DELHI (HQ)/2026/SD/S1) reports on the work of the Commission on the following substantive topics that were placed on the agenda at its seventy-seventh session (2025):

I. Immunity of State officials from foreign criminal jurisdiction.

II. Succession of States in respect of State responsibility.

III. General principles of law.

IV. Settlement of disputes to which international organizations are parties.

V. Prevention and repression of piracy and armed robbery at sea.

VI. Subsidiary means for the determination of rules of international law.

VII. Non-legally binding international agreements

VIII. Compensation for damage caused by internationally wrong acts

IX. Due diligence in international law

7. Further, the document also provides a background along with comments and observations to the following topics that were proposed by members of the Commission and annexed to the Report of the Commission at its seventy-seventh session.

I. The right to regulation in international investment law, proposed by Dr. Vilawan Mangklatanakul

II. Extraterritorial jurisdiction, proposed by Mr. Mario Oyarzábal.

B. Deliberations on the Report on Matters relating to the work of the International Law Commission at the Sixty-Third Annual Session of AALCO held in Kampala, the Republic of Uganda from 8 to 12 September 2025.

7. A brief introduction was provided by H.E. Dr. Kamalinne Pinitpuvadol, Secretary-General of AALCO. By way of background, he recalled the mandate entrusted to AALCO under Article 1(d) of its Statutes, emphasizing the Organization's role in examining topics considered by the Commission, reporting its findings to Member States and ensuring that Asian and African perspectives were reflected in the codification and progressive development of international law.

8. The Secretary-General outlined the principal topics considered by the Commission in 2025, namely "Immunity of State officials from foreign criminal jurisdiction", "succession of States in respect of State responsibility", "general principles of law", "settlement of disputes to which international organizations are parties", "prevention and repression of piracy and armed robbery at sea", "subsidiary means for the determination of rules of international law", "non-legally binding international agreements", and "sea-level rise in relation to international law". He also drew attention to the inclusion of due diligence in international law and compensation for damage caused by internationally wrongful acts in the Commission's programme of work.

9. Reaffirming the long-standing institutional relationship between AALCO and the Commission, the Secretary-General referred to the reciprocal participation of members of the Commission and the AALCO Secretary-General in the meetings of the two bodies. He also highlighted AALCO's recent webinars on immunity of State officials from foreign criminal jurisdiction and international investment law as useful platforms for scholarly engagement and exchange.

10. The Secretary-General stressed that the codification and progressive development of international law must be inclusive, fair and grounded in the lived realities of Asia and Africa. He therefore encouraged Member States to contribute State practice, expert views and carefully considered observations so that the priorities of the two regions would be adequately represented in deliberations concerning international law.

11. Thereafter, H.E. Ms. Marie Charlotte G. Tang, Ambassador Plenipotentiary of the Republic of the Philippines to the Republic of Uganda, with residence in the Republic of Kenya, and Vice-

President of the Sixty-Third Annual Session, invited the members of the Commission to deliver their statements. Prof. Bimal N. Patel and Prof. Dapo Akande addressed the meeting in person, while Dr. Nilüfer Oral, Prof. Masahiko Asada, Amb. Xinmin Ma and Prof. Mārtiņš Paparinskis participated through recorded statements.

12. **Prof. Bimal N. Patel, Member, ILC**, explained that the Commission's seventy-sixth session had been reduced from twelve weeks to five weeks because of the United Nations liquidity crisis. Consequently, the Commission completed only its final report on sea-level rise, while the completion of work on immunity of State officials, general principles of law and succession of States in respect of State responsibility had to be deferred, with consequential effects on its programme in subsequent years.

13. On sea-level rise in relation to international law, Prof. Patel welcomed the final report of the Study Group and situated it alongside the climate-related advisory opinions of international judicial bodies. He suggested that AALCO convene a special meeting to examine these materials, formulate regional positions and assist Member States in understanding the evolving interpretation of the United Nations Convention on the Law of the Sea (UNCLOS).

14. Turning to immunity of State officials from foreign criminal jurisdiction, Prof. Patel observed that draft article 7 remained the most contentious provision. He highlighted concerns that the judicial decisions and State practice relied upon were geographically imbalanced and insufficiently representative of Asia and Africa and proposed that AALCO establish a dedicated working group to provide regional input on the controversial provisions.

15. On general principles of law, Prof. Patel expressed regret that AALCO's contribution had not been reflected in the special rapporteur's report and cautioned against extensive progressive development in relation to a source of international law. He maintained that the Commission's final outcome should preserve State consent, remain firmly grounded in State practice and distinguish general principles of law from *jus cogens* and general principles of international law.

16. With respect to subsidiary means for the determination of rules of international law, Prof. Patel welcomed critical reflection on structural inequalities in the production and reception of international legal doctrine. He urged the Commission to consider diverse intellectual traditions, including critical, feminist and post-colonial approaches, and to assess teachings in their historical, political and ideological contexts.

17. Prof. Patel further encouraged AALCO Member States, particularly those hosting international and regional organizations, to provide practice concerning disputes involving such organizations. On non-legally binding international agreements, he stressed the need for identifiable criteria distinguishing them from treaties and warned against mechanically transposing European and American frameworks to Asia and Africa, whose indigenous practices and jurisprudence remained insufficiently documented.

18. Addressing piracy and armed robbery at sea, Prof. Patel underscored the need to clarify the two concepts, their application in different maritime zones and issues such as the use of private security guards aboard merchant vessels. On succession of States in respect of State responsibility, he explained that his report as Chair of the Working Group identified the difficulties encountered,

summarized the evolution of the draft articles and guidelines, and set out reasons for bringing the Commission's work on the topic to a close.

19. In his statement, Prof. Patel welcomed the addition of compensation for damage caused by internationally wrongful acts and due diligence in international law to the current programme of work, as well as three topics proposed by members from Asian and African States to the long-term programme which were the principle of non-intervention, obligations *erga omnes*, and accountability for crimes committed against United Nations personnel serving in peacekeeping operations. He also encouraged support for some other endeavours of the Commission i.e. the International Law Seminar, the ILC Trust Fund as well as multilingual research and broader Asian-African participation in the United Nations Audiovisual Library of International Law.

20. **Prof. Dapo Akande, Member, ILC,** joined in expressing regret that the Commission's seventy-sixth session had been curtailed to five weeks. He explained that the Commission was consequently able to complete only its work on sea-level rise in relation to international law, while the intended completion of the second reading of the topics of immunity of State officials from foreign criminal jurisdiction and general principles of law, and the first reading of the topics of subsidiary means for determination of international law and settlement of disputes involving international organizations, had to be postponed.

21. Focusing on immunity of State officials from foreign criminal jurisdiction, Prof. Akande clarified that the draft articles addressed the general regime of immunity from the criminal jurisdiction of foreign States. They excluded special regimes governing diplomats, consular officials and special missions, and did not affect obligations arising under instruments establishing international criminal courts and tribunals.

22. Prof. Akande distinguished immunity *ratione personae*, which protects serving Heads of State, Heads of Government and Ministers for Foreign Affairs from foreign criminal jurisdiction in respect of both official and private acts, from immunity *ratione materiae*, which applies to all State officials but only in respect of official acts. He added that the limitation of immunity *ratione personae* to the "troika" was without prejudice to special regimes that might protect other officials.

23. He explained that the Commission had retained draft article 7 on the non-applicability of immunity *ratione materiae* to certain international crimes and had added aggression, slavery and the slave trade to the list. The crimes were not defined by reference to the Rome Statute but as they existed under international law; nevertheless, members remained divided as to whether the exceptions reflected existing customary international law.

24. Prof. Akande emphasized that States would have the final word if the draft articles became the basis of a future treaty. He also noted that procedural safeguards would apply whenever a State official faced the exercise of foreign criminal jurisdiction, although consideration of those safeguards had been deferred because of the shortened session.

25. **Dr. Nilüfer Oral, Member, ILC,** provided an overview of the completed work on sea-level rise in relation to international law. She recalled that the topic had been placed on the Commission's programme in 2019 and that the Study Group's mandate was to map existing international law, identify gaps and examine the law of the sea, statehood and protection of persons, rather than engage in codification or progressive development.

26. Dr. Oral explained that the co-Chairs had consolidated their earlier reports in 2025 and included cross-cutting issues and draft conclusions. Following minor revisions, the final report and conclusions were adopted unanimously by the Commission.

27. She highlighted an emerging convergence of State views that UNCLOS does not oblige States to update lawfully established baselines, geographical coordinates or the outer limits of maritime zones because of climate change-related sea-level rise. States could accordingly preserve existing baselines, maritime zones and boundaries, while the doctrine of fundamental change of circumstances would not permit the termination of maritime boundary treaties.

28. Dr. Oral emphasized that these positions advanced predictability, certainty and stability and had subsequently been reflected in the climate change advisory opinion of the International Court of Justice. She added that the Court had also addressed the continuity of statehood, with the nuance that sea-level rise would not necessarily terminate Statehood and invited States to determine how the Commission's conclusions should be carried forward.

29. **Prof. Masahiko Asada, Member, ILC,** addressed the topic "Identification and legal consequences of obligations *erga omnes* in international law", which had been included in the Commission's long-term programme of work. He recalled the formulation in the Barcelona Traction case that such obligations were owed to the international community as a whole and that all States possessed a legal interest in their protection.

30. Prof. Asada distinguished obligations *erga omnes* partes, owed to a group of States under a treaty, from obligations *erga omnes* in the strict sense, ordinarily arising under customary international law. Referring to article 48 of the 2001 Articles on State Responsibility, he explained that non-injured States might invoke responsibility for breaches of both categories.

31. He noted that the Court had recognized the standing of non-injured States in cases concerning obligations *erga omnes partes* and, in its 2025 climate change advisory opinion, stated that responsibility for the breach of customary obligations *erga omnes* could be invoked by any State. In his view, this development made it necessary to devise clear criteria for identifying such obligations without either confining them to an incomplete list or diluting the concept through over-expansion.

32. Prof. Asada identified several unresolved questions, including whether a non-injured State could act against the wishes of the injured State, whether multiple States could seek different remedies concurrently, how compensation obtained by a non-injured State should be treated and whether the legal interest inherent in an obligation *erga omnes* could satisfy the requirements for intervention before an international court. He also drew attention to the relationship between obligations *erga omnes* and peremptory norms, particularly regarding duties of non-recognition, non-assistance and cooperation.

33. **Amb. Xinmin Ma, Member, ILC,** underlined the shared mission of AALCO and the Commission and called upon Asian and African States to act as architects, rather than merely participants, in the development of international law. He observed that international law continued to be disproportionately influenced by Western perspectives and urged greater attention to diverse civilizations, legal systems, languages, State practice and *opinio juris*.

34. Amb. Ma reviewed the work undertaken at the abbreviated seventy-sixth session and focused on the twelve draft conclusions on general principles of law adopted on second reading, whose commentaries remained to be completed. He explained that the draft conclusions addressed the categories, identification and functions of general principles, their relationship with treaties and customary international law, and principles having a limited scope of application.

35. In particular, he highlighted the recognition of general principles formed within the international legal system, distinct from those derived from national legal systems, while acknowledging continuing disagreement about their identification. He also stressed their functions as foundations of rights and obligations and as means of interpreting and complementing other rules, as well as draft conclusion 12 concerning general principles with a limited regional or subregional scope.

36. **Prof. Mārtiņš Paparinskis, Chair of the seventy-sixth session of the ILC**, summarized the Commission's achievements despite the reduction of its session. He reported the completion of the Study Group's final report on sea-level rise, progress on draft articles 7 to 9 concerning immunity, completion in the Drafting Committee of the second-reading text on general principles of law and of the first-reading text on subsidiary means, with the respective commentaries left for 2026.

37. Prof. Paparinskis explained that the Commission had been able to devote only minimal time to settlement of disputes involving international organizations, non-legally binding international agreements, piracy and armed robbery at sea, and succession of States in respect of State responsibility. He invited States to provide comments on the specific questions identified in chapter III of the Commission's report, while welcoming the addition of two topics to the current programme and three topics to the long-term programme

38. Following the statements of the ILC members, the Vice-President opened the floor to Member States. She invited the Republic of India, the Republic of Türkiye, the Islamic Republic of Iran, Japan, Malaysia, the Kingdom of Thailand, the Socialist Republic of Viet Nam, the Republic of Korea, the People's Republic of China and the United Republic of Tanzania to present their observations

39. **The Delegate of the Republic of India** regretted that the Commission's session had been reduced from twelve to five weeks. On sea-level rise, the Republic of India supported further consideration of legal pathways for preserving maritime zones lawfully established under UNCLOS, notwithstanding physical changes to coastlines, and stressed cooperation in addressing cross-border movement and protection gaps affecting persons displaced by sea-level rise.

40. On immunity, the statement laid emphasis on sovereign equality, good faith and the need for safeguards against abuse and politicization. It called for a balanced solution to the differences surrounding draft article 7 and for closer examination of the timing, content and confidentiality implications of notification under draft article 10.

41. The Republic of India also welcomed work on disputes between international organizations and private parties, criteria distinguishing treaties from non-legally binding agreements, and the principal themes of piracy and armed robbery at sea. It supported clear and fair rules on succession of States in respect of State responsibility and maintained that subsidiary means served only to

assist in determining rules of international law, while seeking clarification concerning the treatment of quasi-judicial bodies.

42. **The Delegate of the Republic of Türkiye** highlighted that the Commission's work should reflect State practice from all geographical regions and supported greater use of AALCO to place Asian and African practice before the Commission. Türkiye reiterated that UNCLOS did not constitute the sole legal framework governing oceans and seas and stated that its participation in AALCO's deliberations was without prejudice to its position as a non-party to that Convention.

43. Türkiye emphasized freedom of navigation, peaceful use of the seas and international cooperation against piracy, armed robbery and maritime terrorism. It welcomed the final report on sea-level rise as an important contribution, while maintaining that the legal consequences for statehood, maritime jurisdiction and statelessness required further research and consultation.

44. **The Delegate of the Islamic Republic of Iran** expressed support for a more regular mechanism for the communication between the Commission and AALCO. On immunity, the Islamic Republic of Iran opposed limiting immunity *ratione personae* to the troika, distinguished immunity from impunity and considered the draft-article form premature in view of divergent State positions and the selective geographical character of some of the practice cited.

45. Regarding succession of States, it was noted that both the paucity of practice and the utility of the Commission's work as guidance for allocating responsibility between predecessor and successor States. On general principles of law, it welcomed replacing "civilized nations" with "community of nations", emphasized State recognition and objected to treating principles formed within the international legal system as a separate category under article 38(1)(c) of the Statute of the International Court of Justice.

46. On sea-level rise, agreement was expressed that the doctrine of fundamental change of circumstances did not apply to maritime delimitation treaties but noted continuing disagreement concerning statehood. The Islamic Republic of Iran commended the Study Group's integration of human rights, refugee, humanitarian and disaster law in relation to affected persons and favoured draft conclusions or guidelines accompanied by detailed commentaries.

47. **The Delegate of Japan** called for broader Asian and African contributions to the Commission and adequate resources for its future sessions. Japan endorsed the conclusion that States were not obliged to update UNCLOS baselines, geographical coordinates or outer limits of maritime zones because of sea-level rise and regarded the final report as a basis for further consensus-building and policy deliberation.

48. Japan also welcomed the inclusion of obligations *erga omnes* in the long-term programme of work. It considered the formulation of criteria for identifying such obligations and clarification of the consequences of breach important for reconciling the rule of law with legal stability and predictability, particularly in light of growing litigation initiated by non-injured States.

49. **The Delegate of Malaysia** called for careful consideration before adding crimes to the exceptions from immunity *ratione materiae*, since the relevant offences were frequently defined in separate treaty regimes. On sea-level rise, Malaysia cautioned against adaptive interpretations of UNCLOS that might depart from its original intent and favoured practical short-term solutions.

50. Malaysia referred to its earlier submission concerning piracy, armed robbery at sea, regional cooperation and uncrewed or autonomous vessels. On general principles of law, it supported retaining language recognizing teachings as a possible subsidiary means, while on subsidiary means generally it sought further clarification and evaluation of draft conclusions 9 to 13.

51. **The Delegate of the Kingdom of Thailand** commended AALCO's webinars and encouraged the revival of the traditional exchange of views between AALCO and the Commission. The Kingdom of Thailand welcomed the addition of the topics of non-intervention, obligations *erga omnes* and accountability for crimes against United Nations peacekeeping personnel to the long-term programme and supported the continuation of the International Law Seminar for young lawyers from underrepresented regions.

52. The Kingdom of Thailand also took note of the final report on sea-level rise particularly its relationship with the International Court of Justice's climate change advisory opinion, concerning the presumption of continuity of statehood. It also encouraged consistency across the Commission's work on sources of international law and closely followed the balance between accountability and sovereignty in the topic of immunity, as well as the work on disputes involving international organizations, non-legally binding agreements, succession and piracy.

53. **The Delegate of the Socialist Republic of Viet Nam** emphasized its vulnerability to sea-level rise and reaffirmed the centrality of UNCLOS, legal stability, sovereignty over natural resources, equity and territorial integrity. Viet Nam maintained that maritime boundaries lawfully established under UNCLOS should remain unchanged notwithstanding sea-level rise

54. On piracy and armed robbery at sea, Viet Nam supported international cooperation and further codification consistent with the Charter of the United Nations and UNCLOS. It cautioned against extending universal jurisdiction to armed robbery at sea and reaffirmed the jurisdiction of coastal States, while on immunity it called for draft articles grounded in customary international law and attentive to diverse legal and cultural perspectives.

55. **The Delegate of the Republic of Korea** welcomed the final report on sea-level rise and considered it a useful foundation for future institutional responses. It expressed reservations regarding general principles said to be formed within the international legal system, emphasizing the difficulty of distinguishing them from customary international law.

56. Regarding subsidiary means, the Republic of Korea reaffirmed that international judicial decisions did not constitute binding precedent for States other than the parties and that each decision, including separate and dissenting opinions, should be assessed carefully for persuasive weight. It also welcomed the decision to discontinue the work on succession of States in respect of State responsibility because of the absence of sufficient and consistent State practice.

57. **The Delegate of the People's Republic of China** proposed that the Commission's working methods be guided by the needs of States, civilizational and legal diversity, regional and linguistic balance, a problem-oriented selection of topics and consensus-based decision-making. It also welcomed the inclusion in the long-term programme of the three topics proposed by members from Asian and African States.

58. On sea-level rise, the People's Republic of China supported preserving the maritime interests and continuity of statehood of small island and developing States. It nevertheless maintained that

UNCLOS did not comprise the entirety of the law of the sea, called for attention to customary rules on historic waters, titles and rights, and cautioned against an expansive application of self-determination in the sea-level-rise context.

59. On immunity, it opposed the exceptions in draft article 7 on the ground that the supporting treaties and practice lacked universality and geographical representativeness. It urged the Commission not to reach premature conclusions and supported strong procedural safeguards against abusive or politically motivated foreign criminal proceedings.

60. On general principles of law, further examination of principles formed within the international legal system, including their conditions of formation, examples in practice and relationship with customary international law, was requested. While on the topic of subsidiary means for the determination of rules of international law, it called for clarification of the status of expert bodies, caution concerning pronouncements of human rights treaty bodies and differentiation among the possible functions of resolutions of international organizations.

61. Regarding settlement of disputes involving international organizations, caution was advised against excessive concentration on private-law disputes and against automatically prioritizing arbitration or litigation over negotiation and consultation. On non-legally binding international agreements, it favoured limiting the topic to States and intergovernmental organizations, excluding sub-State authorities, preserving the Vienna Convention on the Law of Treaties and customary international law, and avoiding reliance on contested decisions.

62. The People's Republic of China further supported work on piracy and armed robbery at sea provided that it preserved the balance under UNCLOS among freedom of the high seas, universal jurisdiction over piracy, flag-State jurisdiction and coastal-State sovereignty and jurisdiction. It considered the decision to bring the topic of succession of States in respect of State responsibility to a close pragmatic because of the scarcity of representative State practice and the difficulty of identifying *opinio juris*.

63. **The Delegate of the United Republic of Tanzania** emphasized that the immunity of State officials supported sovereign equality, non-interference and stable international relations. Tanzania referred to relevant international instruments, the African Union's concern regarding abusive assertions of universal jurisdiction against serving African leaders and its domestic legislation governing immunities, criminal procedure, extradition and mutual legal assistance.

64. Tanzania acknowledged the complexity of balancing immunity, procedural safeguards and accountability for serious international crimes and supported the Commission's continued codification and progressive development of the topic. It considered AALCO well placed to bridge divergent positions and promote an approach that respected sovereignty while advancing justice and the rule of law.

65. In closing the agenda item, the Vice-President thanked the participating delegations and the six members of the Commission for their contributions and declared the consideration of the item concluded.

II. IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION

A. Background

66. The topic "Immunity of State Officials from Foreign Criminal Jurisdiction" was identified for inclusion in the long-term work programme of the Commission based on the recommendation of the Working Group at the Commission's fifty-eighth session in 2006.[1] Subsequently, at the fifty-ninth session in 2007, the topic was included in the work programme of the Commission with appointment of Mr. Roman A. Kolodkin as special rapporteur. Between its sixtieth (2008) and sixty-third (2011) sessions, the Commission considered three reports by the special rapporteur and a memorandum by the Secretariat examining the main legal issues.[2] As Mr. Kolodkin was no longer a member of the Commission, Ms. Concepcion Escobar Hernandez was appointed as the special rapporteur at the sixty-fourth session in 2012. The Commission considered eight reports by the special rapporteur from its sixty-fourth (2012) to seventy-second (2021) sessions. At its seventy-third (2022) session, the Commission adopted, on first reading 18 draft articles and a draft annex, together with its commentaries. The draft articles were subsequently transmitted to the Governments for comments and observations.

67. At its seventy-fourth (2023) session, Mr. Claudio Grossman Guiloff was appointed as the special rapporteur by the Commission, and in the subsequent seventy-fifth (2024) session, the Commission considered Mr. Guiloff's first report along with the comments and observations received from Governments. At its seventy-sixth (2025) session, the Commission considered the second report of the special rapporteur as well as comments and observations received from Governments. The Commission provisionally adopted draft articles 1, 3, 4 and 5 and the commentaries to draft articles 1, 3 and 4. The Commission also took note of the Drafting Committee's report on draft articles 7, 8 and 9 as provisionally adopted by the Drafting Committee on second reading. Due to paucity of time and reduced length of the seventy-sixth session, the adoption of draft articles 7, 8 and 9 was postponed to the seventy-seventh (2026) session of the Commission. At the present session, the Commission adopted the entire set of draft articles on Immunity of State Officials from Foreign Criminal Jurisdiction and commentaries thereto.

B. Consideration of the topic at the seventy-seventh session (2026)

68. The first part of the seventy-seventh session of the Commission was held from 27 April to 5 June 2026, while the second part was held from 29 June to 30 July 2026 at its seat at the United Nations Office at Geneva. In first part of the session, the Commission established a Drafting Committee for the topic Immunity of State Officials from Foreign Criminal Jurisdiction with Mr. Rolf Einar Fife as the Chair.[3] The Commission also established a Working Group on the said topic chaired by Mr. Claudio Grossman Guiloff.[4]

[1] ILC, Summary of Immunity of State Officials from Foreign Criminal Jurisdiction, <https://legal.un.org/ilc/summaries/4_2.shtml> (accessed 17 September 2026).
[2] ILC, 'Report of the International Law Commission on the work of its seventy-seventh session' (2026), UN Doc A/81/10 (ILC Report, 2026) 10 para 34.
[3] Ibid, 2 para 7.
[4] Ibid, 3 para 9.

69. At its 3730th meeting, the Commission provisionally adopted draft article 7, 8 and 9.[5] Subsequently, on 29 April 2026 at its 3731st meeting, the Commission established an open-ended Working Group, chaired by Mr. Guiloff, for assistance in preparation of draft commentaries to the draft articles. Pursuant to report of the Drafting Committee on the topic, the Commission adopted the entire set of 17 draft articles on second reading, at its 3741st meeting on 15 May 2026.[6] From 14 to 21 July 2026, at its 3762nd to 3771st meetings, the Commission adopted the commentaries to the draft articles. After adoption of the draft articles, the Commission expressed its deep appreciation to current and former special rapporteurs Mr. Claudio Grossman Guiloff, Ms. Concepcion Escobar Hernanadez and Mr. Roman A. Kolodkin respectively for their outstanding contribution to the work of the topic.

70. In accordance with article 23 of its statute, the Commission at its 3770th meeting on 20 July 2026, decided to recommend the draft articles to the General Assembly. The Commission particularly recommended the elaboration, at the appropriate time, of a convention by the General Assembly or by an international conference of plenipotentiaries based on the draft articles.[7]

C. Text of the Draft Articles on Immunity of State Officials from Foreign Criminal Jurisdiction

Part One

Introduction

Article 1

Scope of the present draft articles

1. The present draft articles apply to the immunity of State officials from the criminal jurisdiction of another State.

2. The present draft articles are without prejudice to special rules of international law on immunity from criminal jurisdiction enjoyed in particular by persons connected with diplomatic missions, consular posts, special missions, international organizations and armed forces of a State.

3. The present draft articles do not affect the rights and obligations of States under international agreements establishing or relating to the operation of international criminal courts and tribunals as between the parties to those agreements.

Article 2

Definitions

For the purposes of the present draft articles:

(a) "State official" means any individual who represents the State or who exercises State functions, and refers to both current and former State officials;

[5] Ibid, 11 para 40.
[6] Ibid, 11 para 41.
[7] Ibid, 12 para 44.

(b) "act performed in an official capacity" means any act performed by a State official in the exercise of State authority.

Part Two

Immunity *ratione personae*

Article 3

Persons enjoying immunity *ratione personae*

Heads of State, Heads of Government and Ministers for Foreign Affairs enjoy immunity *ratione personae* from the exercise of foreign criminal jurisdiction.

Article 4

Scope of immunity *ratione personae*

1. Heads of State, Heads of Government and Ministers for Foreign Affairs enjoy immunity *ratione personae* only during their period of office.

2. Such immunity *ratione personae* covers all acts performed, whether in a private or official capacity, by Heads of State, Heads of Government and Ministers for Foreign Affairs during or prior to their period of office.

3. The cessation of immunity *ratione personae* is without prejudice to the rules of international law on immunity *ratione materiae*.

Part Three

Immunity *ratione materiae*

Article 5

Scope of immunity *ratione materiae*

1. State officials enjoy immunity *ratione materiae* from the exercise of foreign criminal jurisdiction with respect to acts performed in an official capacity.

2. Immunity *ratione materiae* with respect to acts performed in an official capacity continues to subsist after the individuals concerned have ceased to be State officials.

3. Individuals who enjoyed immunity *ratione personae* in accordance with draft article 4, whose period of office has come to an end, continue to enjoy immunity with respect to acts performed in an official capacity during such period of office.

Article 6

Crimes under international law in respect of which immunity *ratione materiae* shall not apply

Immunity *ratione materiae* from the exercise of foreign criminal jurisdiction shall not apply in respect of the following crimes under international law, as defined according to the applicable rules of international law:

(a) crime of genocide;

(b) crimes against humanity;

(c) war crimes

(d) crime of apartheid;

(e) torture;

(f) enforced disappearance;

(g) crime of aggression;

(h) slavery;

(i) slave trade.

Part Four

Procedural provisions and safeguards

Article 7

Application of the present Part

1. The procedural provisions and safeguards in the present Part shall apply in any situation that may involve the exercise of criminal jurisdiction by the forum State over an official of another State.

2. The present Part is applicable to the draft articles contained in Part Two and Part Three of the present draft articles, including to the determination of whether immunity applies or does not apply under any of the present draft articles.

Article 8

Examination of immunity by the forum State

1. When the competent authorities of the forum State become aware that an official of another State may be affected by the exercise of its criminal jurisdiction, they shall examine the question of immunity without delay.

2. Without prejudice to paragraph 1, the competent authorities of the forum State shall always examine the question of immunity:

(a) before initiating criminal proceedings against an official of another State;

(b) before taking coercive measures that may affect an official of another State, including those that may affect any inviolability that the official may enjoy under international law.

Article 9

Notification to the State of the official

1. Before the competent authorities of the forum State initiate criminal proceedings against an official of another State or take coercive measures that may affect an official of another State, the forum State shall notify the State of the official of that circumstance, unless such notification would jeopardize the confidentiality of an ongoing investigation or the proper conduct of criminal proceedings. In any event, when a State has taken an official of another State into custody, it shall immediately notify the State of the official of the fact that such person is in custody. States shall consider establishing appropriate procedures to facilitate such notifications.

2. A notification under paragraph 1 shall contain appropriate information for the State of the official to consider whether to invoke or waive immunity.

3. The notification shall be provided through diplomatic channels or through any other means of communication accepted by the States concerned.

Article 10

Invocation of Immunity

1. A State may invoke the immunity of its official when it becomes aware that the criminal jurisdiction of another State could be or is being exercised over the official. Immunity should be invoked as soon as possible.

2. Immunity should be invoked in writing, indicating the position held by the official and the grounds on which immunity is invoked.

3. Immunity may be invoked through diplomatic channels or through any other means of communication accepted by the States concerned.

4. The authorities before which immunity has been invoked shall immediately inform any other authorities concerned of that fact.

Article 11

Waiver of immunity

1. The immunity of a State official from foreign criminal jurisdiction may be waived by the State of the official.

2. Waiver of immunity must always be express and in writing.

3. Waiver of immunity may be communicated through diplomatic channels or through any other means of communication accepted by the States concerned.

4. The authorities to which the waiver has been communicated shall immediately inform any other authorities concerned of such waiver.

5. Waiver of immunity is irrevocable.

Article 12

Requests for information

1. The forum State may request from the State of the official any information that it considers relevant in order to determine whether immunity applies or not.

2. The State of the official may request from the forum State any information that it considers relevant in order to decide on the invocation or the waiver of immunity.

3. Information may be requested through diplomatic channels or through any other means of communication accepted by the States concerned.

4. The requested State shall consider any request for information in good faith.

Article 13

Determination of immunity

1. A determination of the immunity of a State official from foreign criminal jurisdiction shall be made by the competent authorities of the forum State according to its law and procedures and in conformity with the applicable rules of international law.

2. In making a determination of immunity, such competent authorities shall take into account in particular:

(a) whether the forum State has made the notification provided for in draft article 9;

(b) whether the State of the official has invoked or waived immunity;

(c) any other relevant information provided by the authorities of the State of the official; and

(d) any other relevant information provided by other authorities of the forum State.

3. When the forum State is considering the application of draft article 6 in making the determination of immunity:

(a) the authorities making the determination shall be at an appropriately high level; and

(b) in addition to what is provided in paragraph 2, the competent authorities shall:

(i) assure themselves that there are substantial grounds to believe that the official committed any of the crimes under international law listed in draft article 6; and

(ii) give consideration to any request or notification by another authority, court or tribunal regarding its exercise of or intention to exercise criminal jurisdiction over the official.

4. The competent authorities of the forum State shall always determine immunity:

(a) before initiating criminal proceedings against an official of another State;

(b) before taking coercive measures that may affect the official, including those that may affect any inviolability that the official may enjoy under international law. This subparagraph does not prevent, prior to the determination of immunity, the adoption or continuance of measures the absence of which would preclude subsequent criminal proceedings against the official.

5. Any determination that an official of another State does not enjoy immunity shall be open to challenge through judicial proceedings. This provision is without prejudice to other challenges to any determination of immunity that may be brought under the applicable law of the forum State.

Article 14

Transfer of the criminal proceedings

1. The competent authorities of the forum State may, acting *proprio motu* or at the request of the State of the official, offer to transfer the criminal proceedings to the State of the official.

2. The forum State shall consider in good faith a request for transfer of the criminal proceedings. Such transfer shall only take place if the State of the official agrees to submit the case to its competent authorities for the purpose of prosecution.

3. Once a transfer has been agreed, the forum State shall suspend its criminal proceedings, without prejudice to the adoption or continuance of measures the absence of which would preclude subsequent criminal proceedings against the official.

4. The forum State may resume its criminal proceedings if, after the transfer, the State of the official does not promptly and in good faith submit the case to its competent authorities for the purpose of prosecution.

5. The present draft article is without prejudice to any other obligations of the forum State or the State of the official under international law.

Article 15

Fair treatment of the State official

1. An official of another State over whom the criminal jurisdiction of the forum State is exercised or could be exercised shall be guaranteed fair treatment, including a fair trial, and full protection of his or her rights and procedural guarantees under applicable national and international law, including human rights law and international humanitarian law.

2. Any such official who is in prison, custody or detention in the forum State shall be entitled:

(a) to communicate without delay with the nearest appropriate representative of the State of the official;

(b) to be visited by a representative of that State; and

(c) to be informed without delay of his or her rights under this paragraph.

3. The rights referred to in paragraph 2 shall be exercised in conformity with the laws and regulations of the forum State, subject to the proviso that the said laws and regulations must enable full effect to be given to the purpose for which the rights referred to in paragraph 2 are intended.

Article 16

Consultations

The forum State and the State of the official shall consult, as appropriate, at the request of either of them, on matters relating to the immunity of an official covered by the present draft articles.

Article 17

Settlement of disputes

1. In the event of a dispute concerning the interpretation or application of the present draft articles, the forum State and the State of the official shall seek a solution by negotiation or other peaceful means of their own choice.

2. If a mutually acceptable solution cannot be reached within a reasonable time, the dispute shall, at the request of either the forum State or the State of the official, be submitted to the International Court of Justice, unless both States have agreed to submit the dispute to arbitration or to any other means of peaceful settlement entailing a binding decision.

Summary of the Commentaries to the Draft Articles

71. While the Commission has addressed the immunity of State officials earlier[8], the present draft articles specifically focus on immunity of State officials from foreign criminal jurisdiction. The distinguishable features of the draft articles are as follows[9]:

(a) it is limited to immunity from criminal jurisdiction;

(b) it is limited to criminal jurisdiction of another State and does not affect the rights and obligations of States under international agreements establishing or relating to international criminal courts or tribunals;

(c) it is applicable to all State officials with the only exception of situations where they are covered by special regimes.

72. The Commission has taken into account diverse elements in preparing the draft articles, such as follows[10]:

[8] Ibid, 18 para (2); Draft Code of Crimes against the Peace and Security of Mankind, Draft Articles on Prevention and Punishment of Crimes against Humanity.
[9] Ibid, 18 para (3).
[10] Ibid, 18-19 para (4)-(7).

(a) The need to guarantee respect for the principle of sovereign equality of States. The objective of the draft articles is to ensure that ability of State officials to represent their States and exercise State functions;

(b) Pursuant to the principle of sovereign equality of States, the forum State has the right to exercise its own criminal jurisdiction;

(c) Consideration to the existing rules in different areas of international law must be given, while elaborating the present draft articles.

73. The Commission is of the view that immunity of State officials from foreign criminal jurisdiction may contribute towards stability of international relations, and these draft articles are aimed at promoting trust, mutual understanding and cooperation between forum State and State of the official.[11]

Summary of Draft Article 1 Commentary

74. Paragraph 1 of draft Article 1 covers three elements of the purpose of the draft articles, namely: (a) persons enjoying immunity (State officials); (b) type of jurisdiction affected by immunity (Criminal); and (c) which criminal jurisdiction is affected (Foreign criminal jurisdiction).[12] The decision of the Commission to confine the scope of draft articles to foreign criminal jurisdiction reflects the interrelation between immunity and foreign criminal jurisdiction. In the words of the International Court of Justice, "it is only where a State has jurisdiction under international law in relation to a particular matter that there can be any question of immunities in regard to the exercise of that jurisdiction".[13] The immunity addressed in draft articles is only procedural in nature and does not result in exemption of criminal jurisdiction.

75. Paragraph 2 of draft Article 1 relates to cases where special rules of international law on immunity from foreign criminal jurisdiction are applicable. According to the Commission, the draft articles should not affect the content and application of these special regimes well established in international law.[14] Moreover, whether the immunity under draft articles is available to a State official is dependent on the special rules and specific circumstances of the situation. It has been further clarified by the Commission that the provisions of draft articles are enjoyed only by individuals and not for instance, by diplomatic mission or consular post itself.[15]

76. Paragraph 3 of the draft Article 1 is inspired by Article 26 of the United Nations Convention on Jurisdictional Immunities of States and Their Property.[16] It emphasises upon the separation and independence of the draft articles, which do not affect the rights and obligations of States under agreements establishing or relating to the operation of international criminal courts and tribunals.[17] The ending of Paragraph 3 "as between the parties to those agreements" highlights that

[11] Ibid, 20 para (10).
[12] Ibid, 22 para (3).
[13] Ibid, 22 para (7).
[14] Ibid, 23 para (9).
[15] Ibid, 25 para (17).
[16] Ibid, 26 para (21).
[17] Ibid, 26 para (20).

conventional legal regimes applicable to international criminal courts and tribunals, apply only between the parties to the relevant agreement.

Summary of Draft Article 2 Commentary

77. Draft Article 2 is the equivalent of "Use of terms" and defines "State official" and "act performed in an official capacity" in subparagraph (a) and (b) respectively. According to the Commission, the persons who enjoy immunity ratione personae and immunity *ratione materiae* fall within the purview of State official. This definition facilitates an understanding of one of the normative elements of immunity i.e., individuals who enjoy immunity. The use of the term "individual" reflects that the present draft articles are applicable only to natural persons.[18] While persons who enjoy immunity ratione personae are identified in draft Article 3, the persons who enjoy immunity *ratione materiae* have not been identified by the Commission due to the difficulty in drawing an exhaustive list. State officials for the purpose of immunity *ratione materiae* must be identified on a case-by-case basis, applying the link of representation or exercise of State functions between the State and the official.[19]

78. As reflected in paragraph 3 of draft Article 4 and paragraph 3 of draft Article 5, the Head of State, Head of Government and Minister for Foreign Affairs may enjoy both immunity ratione personae and immunity *ratione materiae* depending on the rules applicable to each category of the draft articles. The phrase "who represents the State" must be understood in a broad sense including any State official who performs representational functions, which in turn is to be determined on a case-by-case basis. On the other hand, the phrase "exercises State functions" must be understood in a broad sense to include legislative, judicial, executive or other functions performed by the State.[20] The Commission emphasises that for the purpose of defining State official, the link between the State and the official is important. However, the link cannot be interpreted in a broad manner so as to cover all de facto officials.[21] Further, as indicated by the last sentence in subparagraph (a), State official refers to both current and former State officials. The former State officials can only benefit from immunity ratione materiae.[22]

79. For the phrase "act performed in an official capacity", the term "acts" is in consonance with the English text of the articles on responsibility of States for internationally wrongful acts, and the general sense in which it is used in the Rome Statute of the International Criminal Court.[23] The Commission has highlighted that the term can refer to both actions and omissions. Elaborating on the expression "in the exercise of State authority" the Commission is of the opinion that the "act performed in an official capacity" must be attributable to the State. For the objective of attributing an act to a State, the Commission has considered the articles on responsibility of States for internationally wrongful acts as adopted at its fifty-third (2001) session.[24] Some examples of acts

[18] Ibid, 28 para (6).
[19] Ibid, 31 para (12).
[20] Ibid, 31 para (13).
[21] Ibid, 32 para (15).
[22] Ibid, 33 para (20).
[23] Ibid, 33 para (22).
[24] Ibid, 34 para (25).

performed in official capacity as recognized by national courts are as follows: military activities or those related to the armed forces, legislative acts, and political acts of various kinds.[25]

Summary of Draft Article 3 Commentary

80. The draft article 3 is confined to identifying persons to whom immunity ratione personae applies without any reference to its substantive scope. According to the Commission, the reason for according immunity ratione personae to Heads of State, Heads of Government and Ministers for Foreign Affairs, is two-fold.[26] Firstly, the three office holders represent the State in international relations simply by virtue of their office. Secondly, they must be able to discharge their functions in an unhindered manner. The immunity ratione personae enjoyed by Heads of State is undisputed and established under customary international law.[27] Further, this immunity of Head of State has also been expressly mentioned by the International Court of Justice in the Arrest Warrant[28] and Certain Questions of Mutual Assistance in Criminal Matters[29] cases.

81. The Commission considers that immunity ratione personae for Head of State is enjoyed by persons who actually hold that office. Further, recognition of immunity for Head of Government and Minister for Foreign Affairs is resultant of the fact that their functions have become approximate to those of the Head of State.[30] In the Arrest Warrant case it was expressly stated that "certain holders of high-ranking office in a State, such as the Head of State, Head of Government and Minister for Foreign Affairs, enjoy immunities from jurisdiction in other States, both civil and criminal". With regards to "other high-ranking officials", the Commission is of the view that though they do not enjoy immunity ratione personae under the present draft articles, there is no prejudice to the applicability of immunity ratione materiae.[31]

Summary of Draft Article 4 Commentary

82. Draft Article 4 deals with the scope of immunity ratione personae from a temporal and material viewpoint under paragraph 1 and 2 respectively.[32] The use of the adverb "only" emphasises that this type of immunity exclusively applies to Heads of State, Heads of Government and Ministers for Foreign Affairs, during the period of their office. Cessation of these posts results in loss of immunity ratione personae as also upheld in the Arrest Warrant case.[33] During the period of office however, immunity ratione personae is applicable to acts carried out in official and private capacity, thereby being configured as full immunity.[34] Such full immunity is also reflective of the

[25] Ibid, 36 para (30).
[26] Ibid, 39 para (2).
[27] Ibid,39 para (3); Convention Special Missions, Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character, United Nations Convention on Jurisdictional Immunities of States and Their Property.
[28] *Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)*, Judgment, [2002] ICJ Rep 3.
[29] *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment, [2008] ICJ Rep 117
[30] ILC Report, 2026,41 para (6).
[31] Ibid, 45 para (15).
[32] Ibid, 46 para (1).
[33] Ibid, 46 para (2)-(3).
[34] Ibid, 47 para (5).

State practice wherein "no distinction can be drawn between acts performed by a Minister for Foreign Affairs in an official and private capacity".[35]

83. With respect to the definition of "private capacity", the Commission has considered it to be residual in nature i.e., any act not performed in official capacity has been performed in a private capacity.[36] Further, immunity ratione personae is merely procedural in nature and only suspends exercise of foreign criminal jurisdiction during the period of office of the mentioned officials. While immunity ratione personae does not exist after period of office ends, there is no prejudice to the applicability of immunity *ratione materiae* to former Head of State, Head of Government or Minister for Foreign Affairs.[37]

Summary of Draft Article 5 Commentary

84. Immunity *ratione materiae* is applicable to all State officials, current or former including those who previously enjoyed immunity ratione personae but have ceased to hold office. The basis for immunity *ratione materiae* is the nature of the act performed by the State official. Unlike immunity ratione personae which applies to acts performed in official and private capacity, immunity *ratione materiae* is exclusively applicable to acts performed by State officials in an official capacity.[38] For the purpose of immunity *ratione materiae*, the act performed in an official capacity will continue to be such an act and the State official may continue to enjoy immunity irrespective of whether he/she continues to be an official. Moreover, while paragraph 3 of draft Article 5 mentions that individuals who enjoyed immunity ratione personae continue to enjoy immunity *ratione materiae* for acts in official capacity, after cessation of period of office, this does not mean automatic applicability of immunity *ratione materiae*. The necessary requirements for immunity *ratione materiae* will have to be fulfilled namely, (a) act performed by State official; (b) in an official capacity; and (c) during his/her period of office.[39]

Summary of Draft Article 6 Commentary

85. Draft Article 6 lists crimes under international law for which immunity *ratione materiae* is inapplicable in the context of the present draft articles. This however, does not imply that State officials in draft Article 3 are always exempt from the application of draft Article 6.[40] The Commission has provided a two-pronged reasoning for inclusion of draft Article 6.[41] Firstly, to reflect the developments limiting the applicability of immunity *ratione materiae* with respect to crimes under international law. Secondly, to ensure consistency between the draft articles and legal principles under international humanitarian law, international human rights law and international criminal law. It is noteworthy that draft Article 6 is only a procedural bar of immunity *ratione materiae* and should not be understood as the basis for exercise of jurisdiction by the forum State, which is a question to be assessed separately in accordance with international law.[42]

[35] Ibid, 48 para (6).
[36] Ibid, 48 para (9).
[37] Ibid, 50 para (15).
[38] Ibid, 51 para (4).
[39] Ibid, 53 para (14).
[40] Ibid, 54 para (2).
[41] Ibid, 56 para (4)-(5).
[42] Ibid, 59 para (8).

86. The list of nine crimes included under draft Article 6 refer to conduct that has been criminalised under international law irrespective of the national law. The definition of each of the crimes is sourced from treaty instruments identified by the Commission.[43] Further, the Commission has reasoned the inclusion of the specific crimes as follows:[44]

These are most serious crimes of concern to the international community;

Individual responsibility for these crimes exists under international law;

There are treaty-based and customary rules prohibiting these crimes;

These are not considered to be covered by immunity ratione materiae.

87. The objective of such list of crimes is to promote legal certainty, however, it does not exclude the possibility of identification of other crimes to which immunity *ratione materiae* will be inapplicable. The Commission has also emphasised that there is no hierarchy among the crimes listed in draft article 6 and that each of them are of high gravity.[45]

88. The Commission also considered the inclusion of other crimes such as terrorism, trafficking in persons, child prostitution and child pornography, and piracy. However, it decided against the inclusion of these crimes as it is already covered under crimes against humanity, do not fully correspond to crimes under international law, are usually committed by non-State actors, and are generally not reflected in national judicial practice on immunity *ratione materiae*.[46] With respect to the non-inclusion of crime of corruption, it was considered that corruption cannot be regarded as an act performed in official capacity. The Commission has stressed that the non-inclusion of these or any other crimes should not be regarded as underestimation of its gravity.

Summary of Draft Article 7 Commentary

89. Generally, the international instruments concerning immunity of State officials from foreign criminal jurisdiction emphasise on the substantive aspects of immunity, excluding procedural provisions. However, the Commission considered it necessary to include procedural provisions to supplement the provisions in Part One, Two and Three.[47] This necessity was explained by firstly, the need to balance the rights and interests of the State of the official with those of the forum State. Secondly, these provisions would offer States useful instruments for reciprocal communication and cooperation. Lastly, these procedural provisions will ensure that exercise of criminal jurisdiction is not abusive or politically motivated. For the purpose of this Part, the term "exercise of criminal jurisdiction" conveys acts (judicial, governmental, police, investigative or prosecutorial) conducted by competent authorities of the forum State which may be necessary to establish criminal responsibility. Further, the term "criminal proceedings" refers to judicial proceedings for the purpose of determining criminal responsibility.[48]

[43] Ibid, 63-66, para (22)-(30).
[44] Ibid, 60 para (12).
[45] Ibid, 62 para (16).
[46] Ibid, 62 para (17)-(19).
[47] Ibid, 66 para (3).
[48] Ibid, 67 para (5).

90. The broad language of paragraph 1 of draft Article 7 is purposefully broad yet precise to ensure applicability of procedural safeguards at all relevant stages of criminal proceedings and regarding all draft articles under Part One and Two. Paragraph 2 on the other hand specifies the applicability of Part Four to the articles in Parts Two and Three, concerning immunity ratione personae and immunity *ratione materiae*, respectively. Draft Article 7 however, is without prejudice to any additional procedural guarantees and safeguards that States may develop in their bilateral or multilateral relations.

Summary of Draft Article 8 Commentary

91. Draft Article 8 concerns with the obligation of the forum State to examine the question of immunity, which is a preparatory act marking the beginning of process that will end in determination of whether or not immunity applies.[49] This obligation is attributed to "competent authorities" of the forum State, which is to be considered on a case-by-case basis. Paragraph 1 of the draft Article 8 emphasises on the time sensitivity of the examination of immunity. As expressed by the International Court of Justice, the question of immunity should be examined at an early stage and considered in limine litis.[50] On the other hand, Paragraph 2 stresses on the obligation of the forum State to examine the question of immunity before taking any measures mentioned in the paragraph i.e., initiation of criminal proceedings or taking any coercive measures. The examination of immunity prior to "initiation of criminal proceedings" however, does not mean that the question of immunity cannot be examined at a later stage, including at the appeal stage.[51] As one of the most common coercive measures is detention of the official, the Commission considered it necessary to address this issue in connection with examination of immunity. The Commission also noted that coercive measures that necessitate examination of immunity may affect the official's inviolability.[52]

Summary of Draft Article 9 Commentary

92. Draft Article 9 concerns the notification to be provided by the forum State to another State informing its exercise of criminal jurisdiction over the official of that State. With the sole exception of Article 42 of the Vienna Convention on Consular Relations, none of the other treaties provide for an obligation to notify State of the official. The Commission considered such notification essential as it ensures receipt of reliable information by the State of the official, and enables the State in making a decision regarding invocation or waiver of immunity.[53] Paragraph 1 of draft Article 9 elaborates on the time at which notification should be provided i.e., at an early stage, "unless such notification would jeopardise the confidentiality of an ongoing investigation or the proper conduct of criminal proceedings". This exception provides the forum State with a degree of flexibility to ensure that notification does not compromise investigations or future prosecutions.[54] According to the draft Article, an obligation to notify is triggered on (a) initiation of criminal proceedings against the official or (b) coercive measures affecting immunity of the

[49] Ibid, 69 para (1).
[50] Ibid, 70 para (6).
[51] Ibid, 71 para (9).
[52] Ibid, 72 para (12).
[53] Ibid, 73 para (3).
[54] Ibid, 74 para (6).

official. Further, at the latest the State of the official must be notified when the official is taken into custody.

93. Paragraph 2 of the draft Article 9 mentions the content of the notification, which should include sufficient information enabling the State of the official to decide whether immunity is to be invoked or waived. The diverse legal systems and practices concerning disclosure of information is indicated by the phrase "appropriate information". In general, the Commission found the following information useful to be included in the notification: (a) identity of the official; (b) grounds for exercise of criminal jurisdiction; and (c) competent authority exercising jurisdiction.[55] The Commission did not consider it necessary for the notification to be in writing only, as it could be provided through diplomatic channels as well. In Paragraph 3, the means of communication of the notification have also been kept flexible, inclusive of "diplomatic channels" and "any other means of communication accepted by the States concerned". It is important to note here, that any other means of communication must have been accepted by the forum State as well as the State of the official.[56]

Summary of Draft Article 10 Commentary

94. Draft Article 10 concerns invocation of immunity from a two-fold perspective of: (a) right of the State of the official to invoke immunity; and (b) procedural aspects of timing, content and means of communication of such invocation.[57] The invocation of immunity by the State of the official has been considered as a right of discretionary nature.[58] Paragraph 1 of draft Article 10 provides that the State of the official may invoke immunity when it becomes aware that "the criminal jurisdiction of another State could be or is being exercised over the official". Though such invocation should be "as soon as possible", the use of the word "may" indicates that the State of the official has the right to invoke immunity at any time.[59]

95. Paragraph 2 of the draft Article deals with the form of invocation of immunity stating that it "should be" in writing. This however, does not make it obligatory to be in writing as the Commission found that the requirement for invocation of immunity in writing did not exist in customary international law.[60] There is further no requirement to identify the type of immunity being invoked as it was considered to be too much of a technical requirement by the Commission.[61] Paragraph 3 of draft Article 10 is modelled on paragraph 3 of draft Article 9, and identifies the means of invocation of immunity i.e., through diplomatic channels or any other means of communication accepted by both States. The last paragraph of draft Article 10 aims at informing the authorities exercising criminal jurisdiction about the invocation of immunity. This is to prevent any potential ineffectiveness of immunity due to lack of information to the authorities responsible for examining or determining immunity.[62]

[55] Ibid, 75 para (10).
[56] Ibid, 76 para (15).
[57] Ibid, 77 para (1).
[58] Ibid, 78 para (3).
[59] Ibid, 79 para (8).
[60] Ibid, 79 para (10).
[61] Ibid, 79 para (12).
[62] Ibid, 80 para (14).

Summary of Draft Article 11 Commentary

96. Draft Article 11 deals with waiver of immunity from two aspects: firstly, the recognition of the right of the State of the official to waive immunity, and secondly, the procedural details as to the form and means of communicating the waiver.[63] Unlike invocation of immunity, waiver has been discussed in detail by the Commission in several previous draft articles and has been reflected in treaties based on the same.[64] In general, waiver of immunity by the State of the official is a formal act by which that State waives its right to claim immunity, thereby enabling exercise of jurisdiction by the forum State.

97. Paragraph 1 of the draft Article 11 recognizes the right of the State of the official to waive immunity, and the use of the verb "may" indicates that waiver of immunity is a right not an obligation. Such waiver may either be *proprio motu* or at the request of the forum State.[65] Similar to other draft Articles, the competent authorities for waiver of immunity is dependent on the national laws of the State. The Commission further notes that immunity may be waived at any time, including after it was initially invoked.[66] Regarding the form of the waiver, Paragraph 2 states that "it must always be express and in writing". This is modelled on Article 32(2) of the Vienna Convention on Diplomatic Relations and Article 45(2) of the Vienna Convention on Consular Relations.[67] According to the Commission, the waiver may be formulated as a note verbale, letter or other non-diplomatic written communication addressed to authorities of the forum State.[68] While there is no express mention on the content of the waiver, it should generally include name of the official, substantive and procedural scope of the waiver for clarity of the forum State.

98. Paragraph 3 mentions the means by which the State of the official may communicate waiver of immunity i.e., through diplomatic channels or other means accepted by both States. Paragraph 4 is the equivalent of draft Article 10, paragraph 4. Paragraph 5 of draft Article 11 states that "waiver of immunity is irrevocable" and is based on the understanding that once immunity has been waived, the question of immunity ceases to be a barrier to exercise of jurisdiction by the forum State.[69]

Summary of Draft Article 12 Commentary

99. Draft Article 12 provides that both forum State and the State of the official may request information from each other. Paragraphs 1 and 2 are drafted with similar wordings, with the only difference being the objective pursued by the requesting State. For the forum State, the request for information is "to determine whether immunity applies or not" while for the State of the official it is "to decide on the invocation or waiver of immunity".[70] This provision serves as a procedural safeguard for both States. The Commission did not specify the variety of information which may be requested by States, as it is not possible to draw such an exhaustive list, and instead used the

[63] Ibid, 80 para (1).
[64] Ibid, 80 para (2).
[65] Ibid, 82 para (5).
[66] Ibid, 83 para (7).
[67] Ibid, 83 para (8).
[68] Ibid, 84 para (10).
[69] Ibid, 85 para (14).
[70] Ibid, 86 para (2).

expression "any information that it considers relevant".[71] Paragraph 3 is modelled on paragraph 3 of the draft Articles 9, 10 and 11. On the other hand, paragraph 4 of draft Article 12 refers to the general obligation of States to act in good faith in their relations with third parties.

Summary of Draft Article 13 Commentary

100. Draft Article 13 provides for the determination of immunity, which is the decision made by forum State as to whether or not immunity applies prior to initiation of criminal proceedings or coercive action against the official. It is distinct from examination of immunity under draft Article 8, which is only the initial consideration of this question.[72] Paragraph 1 of draft Article 13 states that determination of immunity is to be made by competent authorities of the forum State, who may include administrative and executive bodies, prosecutors, judges or other relevant organs of the State.[73] The Commission specifies that the determination of immunity must produce a result consistent with international law.[74]

101. Paragraph 2 enlists the basic criteria that the forum State shall consider in determining immunity, though these are not the only ones the forum State may consider.[75] The criteria included under this paragraph are directly connected to the procedural safeguards referred to in draft Article 9, 10, 11 and 12. The competent authorities must determine immunity irrespective of whether it has been invoked. Paragraph 3 on the other hand, applies only when the forum State considers that the concerned official may have committed crimes under the scope of draft Article 6. The special criteria mentioned in this paragraph serve a two-fold purpose: firstly, to reduce the risk of politicization and misuse of draft Article 6, and secondly, to give effect to draft Article 6 and enable its use in good faith.[76] The competent authorities for the purpose of this paragraph must be the appropriate high level and are obligated to form a reasoned judgment on whether the official has committed crimes under draft Article 6. Such crimes may be submitted to criminal courts of the forum State or of third parties.[77]

102. Paragraph 4 similar to examination of immunity, mentions that determination of immunity should take place as early as possible. In accordance with paragraph 5, determination of immunity may be challenged by means of judicial proceedings. The Commission considered that since immunity is determined for exercise of criminal jurisdiction by the forum State, there is a strong likelihood of such determination leading to a judicial phase.[78]

Summary of Draft Article 14 Commentary

103. Draft Article 14 provides for the possibility of transferring criminal proceedings to the State of the official and regulates the conditions and effects of such transfer. According to Paragraph 1, transfer of proceedings is not an obligation of the forum State and rather its prerogative. The decision of "offer to transfer" is within the unilateral competence of forum State subject to

[71] Ibid, 86 para (5).
[72] Ibid, 89 para (2).
[73] Ibid, 89 para (5).
[74] Ibid, 89 para (6).
[75] Ibid, 90 para (7).
[76] Ibid, 91 para (14).
[77] Ibid, 93 para (26).
[78] Ibid, 95 para (35).

paragraph 2. The Commission has clarified that transfer of criminal proceedings does not necessitate declination of forum State to exercise their jurisdiction.[79] Paragraph 2 on the other hand, imposes an obligation on the forum State to consider request for transfer in good faith. Such transfer however, will only take place "if the State of the official agrees to submit the case to its competent authorities for the purpose of prosecution". This is termed as the "Hague formula" and appeared for the first time in Article 7 of the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft.[80]

104. Paragraph 3 deals with suspension of criminal proceedings in the forum State as a consequence of the transfer. Paragraph 4 concerns with good faith of the State of the official in keeping the forum State informed about proceedings, failure of which enables the forum State to resume its criminal proceedings. Lastly, paragraph 5 contains a "without prejudice" clause stating that draft Article 14 is without prejudice to the obligations of both States under international law.

Summary of Draft Article 15 Commentary

105. Draft Article 15 recognizes the right of the official of another State to be treated fairly by the forum State, and acts as an additional safeguard supplementing draft Articles 8 to 14. Paragraph 1 is a generic statement that includes all rights and guarantees enjoyed by any individual with respect to any measure taken against him or her by the forum State. These rights include the right to personal liberty, access to courts and fair trial. These rights must be upheld at all stages when forum State takes any action against an official, including prior to, during and after determination of immunity.[81] Paragraph 2 establishes a new right of an official under any form of imprisonment, custody or detention in the forum State, as it is the most extreme scenario of forum State exercising its jurisdiction.[82] Paragraph 3 clarifies that the rights under paragraph 2 shall be exercised in conformity with domestic laws of the forum State, subject to the proviso that such domestic laws enable full effect of the said rights.

Summary of Draft Article 16 Commentary

106. Draft Article 16 deals with consultations between the forum State and State of the official. These consultations are not limited to a specific area and may concern "all matters relating to the immunity of an official covered by the present draft articles". Consultations are distinct from "requests for information" under draft Article 12, which are limited to information necessary for determination, invocation or waiver of immunity. The use of the word "shall" denotes that consultations are obligatory in nature, though they do not constitute a dispute settlement system, nor is their function exclusively related to dispute settlement.[83]

Summary of Draft Article 17 Commentary

107. Draft Article 17 relates to settlement of any disputes that may arise between the forum State and the State of the official. This provision was considered relevant by the Commission as a final step in the logical sequence of Part 4 of the present draft articles. Paragraph 1 broadly follows the

[79] Ibid, 98 para (9).
[80] Ibid, 99 para (11).
[81] Ibid, 103 para (6).
[82] Ibid, 103 para (8).
[83] Ibid, 104-105 para (3)-(5).

wording of Article 33 of the Charter of United Nations with use of the words "shall seek a solution" denoting an obligation of conduct required from both States, to settle any disputes by peaceful means.[84] Paragraph 2 on the other hand, establishes a dispute settlement system which will be triggered in situations where States have been unable to resolve dispute by means of their own choice. This compulsory system may be activated unilaterally by either States concerned, only if they have been unable to reach "a mutually acceptable solution … within reasonable time". In such situations, the dispute is submitted to the International Court of Justice, unless both States have agreed to submit the dispute to another means of judicial settlement. The Commission specifically noted that draft Article 17 does not include a provision on suspension of proceedings where case is submitted to dispute settlement, citing the reason that suspension of proceedings may encounter serious difficulties in some domestic legal systems.[85]

D. Present status and Future Work

108. At the seventy-seventh session of the Commission, the complete set of 17 draft articles along with commentaries were adopted on second reading, following the consideration of the remaining provisions by the Drafting Committee. The Commission has now recommended, pursuant to Article 23 of its Statute, that the General Assembly proceed, at the appropriate time, with the elaboration of a convention on the basis of the draft articles, either itself or through an international conference of plenipotentiaries. Therefore, the potential future work on the topic is expected to shift from substantive drafting by the Commission to consideration by States within the General Assembly, and subsequently possible negotiation and adoption of a multilateral convention.

E. Comments and observations of the AALCO Secretariat

109. The AALCO Secretariat congratulates the Commission on the adoption of the complete set of 17 draft articles and commentaries on Immunity of State Officials from Foreign Criminal Jurisdiction. Since the topic was taken up in 2007, it has held lasting significance for AALCO Member States, who appreciate its complexity and its essential contribution to stable international relations. The draft articles sit at the intersection of sovereign equality, the effective conduct of foreign relations and the fight against impunity.

110. The Secretariat welcomes the Commission's effort to reconcile respect for State sovereignty with the performance of official functions abroad. The Secretariat also notes the retention of a defined list of crimes in respect of which immunity *ratione materiae* does not apply. This offers legal certainty while leaving room for future development. However, views continue to differ on the legal basis of this exception in State practice, and concerns have been expressed regarding its possible asymmetric application to officials of developing States. The Secretariat considers that these questions merit continued reflection, so that future outcomes pursuant to the draft articles are inclusive of diverse State perspectives.

111. The Secretariat also emphasizes that the procedural safeguards in Part Four are an indispensable counterpart to the substantive provisions. They guard against politicized or abusive exercise of jurisdiction, while ensuring that immunity does not become shield for impunity. It is

[84] Ibid, 106 para (6).
[85] Ibid, 107 para (12).

reassuring that the draft articles incorporate timely and confidential notification to the State of the official, good faith in requests for information and determination of immunity.

112. AALCO Member States have had some shared concerns including the need to maintain a balance between immunity and accountability, the importance of safeguards against politically motivated prosecutions, and caution as to the basis and scope of exceptions to immunity. The Secretariat considers it expedient that these views be carefully taken into account, so that any future instrument commands broad acceptance with geographically inclusive State practice and offers practical guidance to relevant national authorities.

113. The Secretariat notes the Commission's recommendation that the General Assembly proceed towards a convention on the basis of the draft articles. It encourages all Member States to engage actively in these deliberations. Should negotiations follow, it is vital that Asian-African perspectives are fully reflected. To this end, AALCO will continue its endeavours to facilitate discussions on this topic among Member States, with the objective of ensuring adequate representation of Asian-African practice in any future convention.

114. The Secretariat invites Member States to consider the draft articles and commentaries, and share their views on its scope and implementation, along with relevant national legislation, judicial decisions and executive practice at the upcoming Sixty-Fourth Annual Session of AALCO. It is believed that such State practice would be beneficial for future work on this topic.

III. SUCCESSION OF STATES IN RESPECT OF STATE RESPONSIBILITY

A. Background

115. At its sixty-ninth session (2017), the Commission decided to include the topic "Succession of States in respect of State responsibility" in its programme of work and appointed Mr. Pavel Šturma as special rapporteur. The General Assembly, in its resolution 72/116 of 7 December 2017[86], subsequently took note of the decision of the Commission to include the topic in its programme of work.

116. From its sixty-ninth to seventy-third (2017–2022) sessions, the Commission considered five reports by the special rapporteur,[87] as well as a memorandum by the Secretariat providing information on treaties which may be of relevance to its future work on the topic.[88] Following the debate on each report, the Commission decided to refer the proposals for draft articles made by the special rapporteur to the Drafting Committee. The Commission heard interim reports and statements from the successive Chairs of the Drafting Committee on succession of States in respect of State responsibility at the sixty-ninth to seventy-third sessions.

117. At its seventy-third session, (2022) the Commission decided, on the recommendation of the special rapporteur, to instruct the Drafting Committee to proceed with the preparation of draft guidelines on the basis of the provisions previously referred to the Drafting Committee (including those provisions provisionally adopted by the Commission at previous sessions), taking into account the debate held in the plenary on the special rapporteur's fifth report.

118. Also at its seventy-third session, the Commission provisionally adopted, with commentaries, draft guidelines 6, 10, 10 bis and 11, which had been provisionally adopted by the Drafting Committee in 2018 and 2021, as well as draft guidelines 7 bis, 12, 13, 13 bis, 14, 15 and 15 bis, which were provisionally adopted by the Drafting Committee in 2022. As a result of the change of the proposed form of the outcome, the Commission also took note of draft articles 1, 2, 5, 7, 8 and 9, as revised by the Drafting Committee to be draft guidelines.

119. At its seventy-fourth session (2023), the Commission had no report before it on the topic, as the special rapporteur was no longer a member of the Commission. The Commission decided to establish a Working Group on the topic and appointed Mr. August Reinisch as its Chair. The Working Group recommended that the Commission continue its consideration of the topic, while refraining, at that stage, from proceeding with the appointment of a new special rapporteur. It further recommended that the Working Group be re-established at the seventy-fifth session (2024)

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[86] UNGA, 'Report of the International Law Commission on the work of its sixty-ninth session' UNGA Res 72/116 (7 December 2017) UN Doc A/RES/72/116.

[87] ILC, 'First report on succession of States in respect of State responsibility Pavel Šturma, special rapporteur' (31 May 2017) UN Doc A/CN.4/708; ILC, 'Second report on succession of States in respect of State responsibility Pavel Šturma, special rapporteur' (6 April 2018) UN Doc A/CN.4/719; ILC, 'Third report on succession of States in respect of State responsibility Pavel Šturma, special rapporteur' (2 May 2019) UN Doc A/CN.4/731; ILC, 'Fourth report on succession of States in respect of State responsibility Pavel Šturma, special rapporteur' (27 March 2020) UN Doc A/CN.4/743; ILC, 'Fifth report on succession of States in respect of State responsibility Pavel Šturma, special rapporteur' (1 April 2022) UN Doc A/CN.4/751.

[88] UN Secretariat, 'Succession of States in respect of State responsibility: Information on treaties which may be of relevance to the future work of the Commission on the topic — Memorandum by the Secretariat' (2019) UN Doc A/CN.4/730.

of the Commission, with the same open-ended composition, with a view to undertaking further reflection on the way forward for the topic and making a recommendation thereon. The Commission subsequently took note of the oral report of the Chair of the Working Group, including the recommendations contained therein.

120. At its seventy-fifth session (2024) the Commission re-established the Working Group, with Mr. Reinisch as Chair. Having considered and taken note of the report of the Working Group, at the same session, the Commission decided:

a. to establish at its seventy-sixth session (2025) a Working Group on succession of States in respect of State responsibility for the purpose of drafting a report that would bring the work of the Commission on the topic to an end;

b. that the report would contain a summary of the difficulties that the Commission would face if it were to continue its work on the topic and explain the reasons for the discontinuance of such work; and

c. to appoint Mr. Bimal N. Patel as Chair of the Working Group to be established at the seventy-sixth session of the Commission and recommended that the Chair be encouraged to prepare the draft report of the Working Group in advance of the session, in close collaboration with interested members.

121. At its seventy-sixth session, the Commission decided to establish a Working Group of the Whole on the topic, further to the decision taken at its seventy-fifth session, and appointed Mr. Bimal N. Patel as Chair. The Commission subsequently took note of the oral report of the Chair of the Working Group.

B. Consideration of the topic at the seventy-seventh session (2026)

122. At its 3729th meeting, on 27 April 2026, the Commission re-established the Working Group of the Whole with Mr. Patel as Chair. The Working Group had before it a revised draft report prepared by its Chair[89]. The revised draft report contained, in its annex, a proposal by the Chair for the final report of the Working Group. The Working Group was not able to consider and did not adopt the Chair's proposed final report. The Working Group decided that the Chair's proposed final report would be reissued as a separate document.[90] The document included three annexes containing, respectively, a summary of the evolution of the draft provisions from draft articles to draft guidelines, a table reflecting the status of the draft articles and draft guidelines and a multilingual selected bibliography on the topic.

123. The Working Group held five meetings, on 14 and 21 May and 2, 4 and 29 June 2026. At its 3760th meeting, on 13 July 2026, the Commission considered and took note of the Report of the Working Group,[91] which, inter alia, contained the recommendation of the Working Group.

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[89] ILC, 'Revised draft report of the Working Group on succession of States in respect of State responsibility Bimal N Patel' (2026) UN Doc A/CN.4/L.1004/Rev.1.

[90] ILC, 'Revised draft report of the Working Group on succession of States in respect of State responsibility Bimal N Patel' (2026) UN Doc A/CN.4/L.1004/Rev.2

[91] ILC, 'Succession of States in respect of State responsibility Report of the Working Group' (30 June 2026) UN Doc A/CN.4/L.1038.

124. At its 3781st meeting, on 28 July 2026, the Commission, on the recommendation of the Working Group:

a. adopted the report of the Working Group on the topic "Succession of States in respect of State responsibility",

b. decided not to pursue consideration of the topic further.

Report of the Working Group

125. The working group report is structured in three parts. Section I contains summary of the debates on this topic and includes work undertaken based on five reports of the special rapporteur, work undertaken by the Working Groups on the topic and the summary of the transition in outcome from draft articles to draft guidelines. Section II summarizes the major difficulties faced by the Commission during the consideration of this topic. Section III contains the recommendation of the Working Group to the Commission.

Summary of the debates on the topic

126. The topic was placed on the Commission's programme of work in 2017, with Mr. Pavel Šturma appointed as special rapporteur. The consideration of the topic was intended, inter alia, to address questions left open following the Commission's earlier work on the law of State succession, including the Vienna Convention on Succession of States in respect of Treaties, 1978, the Vienna Convention on Succession of States in respect of State Property, Archives and Debts, 1983, and the Commission's work on nationality in relation to the succession of States. The topic sought to examine the relationship between the law of State succession and the law of State responsibility.

127. In his first report, submitted in 2017, the special rapporteur examined the possible transfer of obligations and rights arising from State responsibility. While the traditional doctrine generally denied the transfer of State responsibility or of the legal consequences of internationally wrongful acts, the preliminary examination of State practice did not support a general proposition that such rights and obligations could never pass from a predecessor State to a successor State.

128. In his second report, submitted in 2018, the special rapporteur considered questions relating to legality, attribution, continuing and past breaches, and particular categories of succession. The report proceeded from a flexible approach to secondary rules, while recognising the scarcity of relevant State practice and the methodological difficulties involved in drawing general conclusions from such practice.

129. In his third report, submitted in 2019, the special rapporteur examined reparation for injury caused to a predecessor State. The consideration of the topic did not support either the automatic extinction or automatic transfer of claims for reparation. In particular, where the predecessor State continued to exist, it could retain the right to claim reparation for injury suffered as a consequence of an internationally wrongful act. During the Commission's consideration of the topic in 2019, members noted that State practice was limited, diverse and frequently dependent upon the particular circumstances of individual cases. The Commission also considered methodological questions concerning the use of academic literature and the possible final form of the Commission's work.

130. The fourth report, submitted in 2020, addressed the forms of State responsibility and reparation, including cessation, assurances and guarantees of non-repetition, restitution, compensation and satisfaction. Particular attention was given to negotiated settlements and lump-sum agreements, which were found to be influenced by a variety of legal and non-legal considerations. The diversity of such arrangements made it difficult to draw general conclusions regarding customary international law.

131. The fifth report, submitted in 2022, examined situations involving a plurality of injured States and responsible successor States, including cases of dissolution and separation. It considered the relevance of specific agreements and equitable apportionment. In view of the paucity of relevant practice and concerns regarding the appropriateness of draft articles, the format of the Commission's work was subsequently changed from draft articles to draft guidelines.

132. In 2023, the Commission established an open-ended Working Group, chaired by Mr. August Reinisch, to continue consideration of the topic. The Working Group examined the draft guidelines and the possible final form of the Commission's work. It recommended the continuation of consideration of the topic, while no new special rapporteur was appointed.

133. During the Commission's consideration in 2024, concerns were expressed regarding the sufficiency and representativeness of State practice. Members also considered the distinction between the transfer of State responsibility itself and the transfer of rights and obligations arising from State responsibility. Questions concerning the respective roles of codification and progressive development of international law were also discussed.

134. In 2025, the Commission established the Working Group of the Whole with a mandate to prepare a report bringing the Commission's consideration of the topic to an end. The discussions in the Sixth Committee reflected differing views concerning whether consideration of the topic should be continued or concluded.

135. The Working Group noted that the change in the proposed final form of the Commission's work from draft articles to draft guidelines represented more than a change in terminology. Draft articles are generally formulated as rules suitable for inclusion in a treaty, whereas guidelines are intended principally to provide guidance to States in addressing particular situations. Accordingly, the change required a fresh examination of the substance and formulation of the proposed text.

136. The Working Group further noted that, owing to the limited time available, it had not been possible to undertake a comprehensive review of all the draft guidelines following the change in their proposed final form. Further examination and editorial refinement would therefore have been required had the Commission decided to continue consideration of the topic.

Major difficulties faced during the consideration of the topic

Issues relating to State practice

137. A principal difficulty identified by the Working Group was the paucity of State practice relating specifically to succession of States in respect of State responsibility. The Working Group noted, in particular, the need for practice that was sufficiently representative from a geographical perspective, including greater consideration of practice from African and Asian States. The

available practice was found to be diverse, context-specific and frequently connected with particular historical and political circumstances.

Negotiated solutions and agreements as evidence of rules of customary international law

138. The Working Group observed that States have frequently addressed questions arising from succession through negotiated bilateral or multilateral agreements, proceedings before domestic or international courts, and constitutional or other domestic arrangements. Such negotiated solutions reflected the freedom of States to determine the consequences of succession in individual circumstances. However, the limited availability of information concerning such agreements made it difficult to determine the extent to which they reflected or contributed to general rules of customary international law.

Automatic succession or "clean slate" rule

139. The question whether succession of States should result in the automatic transfer of rights and obligations or whether a successor State should benefit from a clean-slate approach remained unresolved. The available practice did not establish either approach as a general rule applicable to all situations of succession. The Working Group therefore considered that the consequences of succession would need to be assessed on a case-by-case basis, having regard to the circumstances of the particular succession.

Distinction between the transfer of responsibility and the transfer of rights and obligations arising from the responsibility of a predecessor State

140. The Working Group identified a continuing conceptual difficulty concerning the distinction between the succession to State responsibility and the transfer of rights and obligations arising from State responsibility. The general rules of State responsibility attach the consequences of an internationally wrongful act to the State responsible for that act. Questions nevertheless arise where the predecessor State ceases to exist and a successor State may inherit rights, assets or benefits associated with the predecessor. The Working Group found that State practice did not permit a general rule to be established in this respect. The question of continuing internationally wrongful acts also remained inconclusive. The practice examined by the Commission did not establish a uniform approach to the consequences of succession in cases involving continuing or composite acts. The Working Group accordingly found insufficient basis for formulating a generally applicable rule.

Codification or progressive development

141. The Working Group further identified difficulties in determining whether the proposed guidelines were primarily codification or progressive development of international law. Given the limited State practice, it was considered necessary to distinguish carefully between propositions supported by existing law and those which might instead represent the progressive development of international law.

State responsibility versus State debts

142. The Working Group considered the relationship between State responsibility and the succession to State debts, particularly with regard to obligations to provide reparation. It found no

conclusive evidence of a customary rule governing the devolution of such obligations. Reference was made to the judgment of the International Court of Justice in the *Gabčíkovo-Nagymaros Project*[92], in which the Court considered the responsibility and entitlement to compensation of Slovakia in the context of the dissolution of Czechoslovakia. The Working Group noted, however, that the Court's conclusion was linked to the parties' agreement that Slovakia was the sole successor with respect to the rights and obligations relating to the project.

Unjust enrichment and internationally wrongful acts

143. The Working Group also considered the possible relevance of unjust enrichment, particularly where a successor State may have obtained benefits from conduct giving rise to the predecessor State's responsibility. Considerations relating to territorial links, benefits received and equity were identified as potentially relevant. At the same time, the precise legal status and content of unjust enrichment as an independent principle in this context remained subject to debate.

Continuing acts and composite acts

144. Similar difficulties arose with respect to continuing and composite internationally wrongful acts, where State practice was found to be inconsistent and insufficient to support a firm general conclusion.

C. Future work and way forward

145. The Commission, taking the views of States into account, changed the final form of the outcome on the topic from draft articles to draft guidelines due to the relative paucity of State practice to justify them. This resulted in a set of draft guidelines that required fresh examination. When the Commission changed the form from draft articles to draft guidelines at its seventy-third session, more time was needed than was available to examine their suitability as a set of nonbinding guidelines for States, leading to concerns about their eventual acceptance by States.

146. The Commission adopted the report of the Working Group on the topic and decided not to pursue consideration of the topic further.

D. Comments and observations of the AALCO Secretariat

147. The conclusion reached by the Working Group marks the end of an extensive examination of a relatively unsettled area at the intersection of the law of State succession and the law of State responsibility. The principal difficulty identified throughout the Commission's consideration was the limited and diverse nature of State practice from which sufficiently general rules could be derived. The Working Group's conclusion therefore reflects the difficulty of establishing generally applicable rules in an area where succession arrangements have frequently been addressed through negotiated and context-specific solutions.

148. From the perspective of AALCO Member States, the Working Group's emphasis on the need for broader and more representative State practice is of particular relevance. The report specifically identifies the limited availability of practice, including from African and Asian States, as one of the difficulties affecting the development of the topic. Greater documentation and study of State

[92] *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia), Judgment, [1997] ICJ Rep. 7 para. 151.

practice from these regions may contribute to a more comprehensive understanding of the legal consequences of State succession in future discussions of the subject.

149. The Working Group's recommendation to discontinue consideration of the topic does not resolve the underlying legal questions concerning the consequences of State succession for rights and obligations arising from internationally wrongful acts. Rather, the conclusion reflects the Commission's assessment that the available material did not provide a sufficiently firm basis for the formulation of generally applicable rules. The questions examined during the Commission's consideration may therefore continue to arise in individual cases, particularly where successor States assume rights, assets or obligations connected with a predecessor State.

150. The AALCO Secretariat notes that notwithstanding the discontinuation of the topic by the ILC, developments concerning State succession and State responsibility remain relevant to Member States, particularly in circumstances involving dissolution, separation or other forms of State succession. Continued observation of relevant State practice, judicial decisions and negotiated arrangements may assist in clarifying the legal questions that remain unsettled.

151. Finally, the Secretariat notes that the Commission itself has not foreclosed the possibility of revisiting the topic in the future. Any future consideration would, however, need to address the methodological, substantive and formal difficulties identified during the present project. In this regard, the experience of the topic may also provide broader lessons concerning the Commission's working methods, particularly where the available State practice is limited, geographically uneven and strongly dependent upon the circumstances of individual cases.

IV. GENERAL PRINCIPLES OF LAW

A. Background

152. The Commission included "General principles of law" in its programme of work in 2018 and appointed Mr Marcelo Vázquez-Bermúdez as special rapporteur. The topic concerns general principles of law as a source of international law under Article 38(1)(c) of the Statute of the International Court of Justice, particularly their identification, functions and relationship with treaties and customary international law.[93]

153. Between 2019 and 2025, the Commission considered four reports by the special rapporteur and a Secretariat memorandum on relevant treaties and judicial practice. In 2023, it adopted 11 draft conclusions, with commentaries, on first reading and invited Governments to submit comments. Following its consideration of those comments in 2025, the Drafting Committee provisionally adopted 12 draft conclusions on second reading. Adoption by the Commission was deferred to 2026 because of the shortened seventy-sixth session.[94]

B. Completion of the second reading at the seventy-seventh session (2026)

154. At its 3729th meeting, on 27 April 2026, the Commission considered the Drafting Committee's report and adopted all 12 draft conclusions on second reading. No new substantive report by the special rapporteur was before it in 2026 although he submitted a revised bibliography on the topic.[95]

155. In the plenary discussion preceding adoption, ILC Member Mr Bimal N Patel expressed concern about the threshold for identifying a general principle of law. He considered that the phrase "various legal systems" should be replaced by "majority of legal systems of the world" in draft conclusions 4, 5, 6 and 9, as a safeguard against transposing principles that lacked sufficiently broad recognition into international law.[96]

156. Following adoption, ILC Member Mr Mathias Forteau emphasised that the commentary to conclusion 7 should clarify the method for identifying principles formed within the international legal system and distinguish them from rules of customary international law. He expressly referred to statements by States and AALCO during the Sixth Committee's consideration of the topic at the General Assembly's eightieth session. Those statements sought clarification of the practice establishing the existence of this category of principles and the criteria distinguishing them from customary international law. He urged that the commentaries faithfully reflect the clarifications requested by the Drafting Committee and States.[97]

157. On 5 June 2026, the Commission established an open-ended Working Group, chaired by the special rapporteur, to assist in preparing the commentaries. The Working Group met once, on 6

[93] ILC Report 2026, para 49; Statute of the International Court of Justice art 38(1)(c).
[94] Ibid paras 50-52; ILC, 'Report on the Work of Its Seventy-Fourth Session' (2023) UN Doc A/78/10, paras 38-41.
[95] Ibid paras 50 n 262, 53; ILC, 'Report of the Drafting Committee on General Principles of Law' (2025) UN Doc A/CN.4/L.1018.
[96] ILC, 'Provisional Summary Record of the 3729th Meeting' (27 April 2026) UN Doc A/CN.4/SR.3729, 4-5.
[97] Ibid 5.

July. The Commission adopted the commentaries at meetings held from 23 to 27 July 2026, completing its work on the topic.[98]

C. Overview of the Draft Conclusions Adopted on Second Reading

158. The draft conclusions provide a method for identifying general principles of law rather than a catalogue of particular principles. *Conclusions 1 and 2* address their scope and the requirement that they be recognised by the "community of nations". The commentary explains that this expression replaces the terminology used in Article 38(1)(c) of the ICJ Statute without changing its substance. States play the primary role in expressing recognition; international organisations may contribute to it, but their recognition alone does not suffice.[99]

159. *Conclusion 3* identifies two categories: principles derived from national legal systems and principles that may be formed within the international legal system. *Conclusions 4 to 6* require the existence of a principle common to the various legal systems of the world to be established through a wide and representative comparative analysis, including the different regions of the world. A common national principle must also be capable of transposition to the international legal system.[100]

160. *Conclusion 7* concerns the second category. It requires ascertainment that the community of nations has recognised a principle as intrinsic to the international legal system. The commentary calls for examination of existing international rules and all available evidence of recognition, which should be wide and representative of different regions. It explains that the word "may" acknowledges continuing debate about this category. Judicial decisions discussed in the commentary illustrate aspects of the method without necessarily establishing that every principle mentioned in them satisfies the criteria.[101]

161. *Conclusions 8 and 9* address subsidiary means for determining the existence and content of general principles of law. They cover decisions of international courts and tribunals, appropriate use of national judicial decisions, and teachings. In relation to teachings, the text gives particular attention to coinciding views of persons with competence in international law from different legal systems and regions.[102]

162. *Conclusions 10 to 12* address the functions, relationship with other sources and possible scope of general principles of law. Such principles may provide substantive rights and obligations, secondary or procedural rules, and assistance in interpreting and complementing other rules. They are mainly resorted to where other rules do not fully resolve an issue, but their function is not confined to filling gaps. They have no hierarchical relationship with treaties or customary international law and may coexist with rules of similar content. The conclusions are without prejudice to principles with a limited scope of application.[103]

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[98] ILC Report, 2026, paras 53-54 and n 270.
[99] Ibid para 58, draft conclusions 1-2, and para 59, commentary to draft conclusion 2, paras (2)-(6).
[100] Ibid para 58, draft conclusions 3-6.
[101] Ibid para 58, draft conclusion 7, and para 59, commentary to draft conclusion 7, paras (2)-(6).
[102] Ibid para 58, draft conclusions 8-9.
[103] Ibid para 58, draft conclusions 10-12.

D. Text of the draft conclusions provisionally adopted thus far by the Commission

General principles of law

Conclusion 1

Scope

The present draft conclusions concern general principles of law as a source of international law.

Conclusion 2

Recognition

For a general principle of law to exist, it must be recognized by the community of nations.

Conclusion 3

Categories of general principles of law

General principles of law comprise those:

(a) that are derived from national legal systems;

(b) that may be formed within the international legal system.

Conclusion 4

Identification of general principles of law derived from national legal systems

To determine the existence and content of a general principle of law derived from national legal systems, it is necessary to ascertain:

(a) the existence of a principle common to the various legal systems of the world; and

(b) its transposition to the international legal system.

Conclusion 5

Determination of the existence of a principle common to the various legal systems of the world

1. To determine the existence of a principle common to the various legal systems of the world, a comparative analysis of national legal systems is required.

2. The comparative analysis must be wide and representative, including the different regions of the world.

3. The comparative analysis includes an assessment of national laws and decisions of national courts, and other relevant materials.

Conclusion 6

Transposition to the international legal system

A principle common to the various legal systems of the world may be transposed to the international legal system insofar as it is compatible with that system.

Conclusion 7

Identification of general principles of law formed within the international legal system

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.

Conclusion 8

Decisions of courts and tribunals

1. Decisions of international courts and tribunals, in particular of the International Court of Justice, are a subsidiary means for the determination of the existence and content of general principles of law.

2. Without prejudice to their use for the purposes of draft conclusion 5, regard may be had, as appropriate, to decisions of national courts concerning the existence and content of general principles of law, as a subsidiary means for the determination of such principles.

Conclusion 9

Teachings

Teachings, especially those generally reflecting the coinciding views of persons with competence in international law from the various legal systems and regions of the world, are a subsidiary means for the determination of general principles of law.

Conclusion 10

Functions of general principles of law

1. General principles of law may contribute to the coherence of the international legal system. They serve, inter alia:

(a) as a basis for substantive rights and obligations, as well as for secondary and procedural rules;

(b) to interpret and complement other rules of international law.

2. General principles of law are mainly resorted to when other rules of international law do not address or resolve a particular issue in whole or in part.

Conclusion 11

Relationship between general principles of law and treaties and customary international law

1. General principles of law, as a source of international law, are not in a hierarchical relationship with treaties and customary international law.

2. A general principle of law may exist in parallel with a rule of the same or similar content in a treaty or customary international law.

3. Any conflict between a general principle of law and a rule in a treaty or customary international law is to be resolved by applying the generally accepted techniques of interpretation and conflict resolution in international law.

Conclusion 12

General principles of law with a limited scope of application

The present draft conclusions are without prejudice to general principles of law with a limited scope of application.

E. Recommendation to the UN General Assembly and Present Status

163. At its 3780th meeting, on 27 July 2026, the Commission decided to recommend that the General Assembly take note of the draft conclusions in a resolution, annex them to that resolution and ensure their widest dissemination. It further recommended that the Assembly commend the conclusions and commentaries to States and others called upon to identify or apply general principles of law, and note the bibliography prepared by the special rapporteur.[104] The Commission's work on the topic is complete. Its recommendation is now addressed to the General Assembly.

F. Comments and observations of the AALCO Secretariat

164. The AALCO Secretariat welcomes the completion of the Commission's work on this source of international law. The conclusions' emphasis on recognition by the community of nations and representative evidence gives particular importance to the legal systems, judicial decisions and State practice of Africa and Asia. Singapore's written comments on the topic demonstrate the value of AALCO Member State engagement with the method for identifying principles formed within the international legal system. When the conclusions are applied, careful attention should be given to the evidence of recognition and to the distinction between general principles of law and customary international law.[105] The AALCO Secretariat welcomes the completion of the Commission's work on general principles of law and acknowledges the contribution of Special Rapporteur Mr Marcelo Vázquez-Bermúdez. The conclusions and their commentaries provide an important reference for examining this source of international law. Their consideration should remain attentive to the priorities and concerns expressed by AALCO Member States, including State recognition, methodological clarity and adequate representation of diverse legal systems.

[104] ILC, 'Report on the Work of Its seventy-seventh Session' (2026) UN Doc A/81/10, para 55-56.
[105] Ibid para 58, draft conclusions 2, 5 and 7.

165. For principles derived from national legal systems, Member States have emphasised broad and representative comparative analysis. In considering the completed text, attention should be given to whether the identification of a principle rests on sufficient evidence from different legal systems and whether its transposition is compatible with the international legal system. This is particularly relevant to ensuring that Asian and African legal traditions receive appropriate consideration.

166. Member States continue to hold differing views on principles formed within the international legal system. Some support this category, while others question its legal basis or seek clearer criteria. Without prejudging these positions, the Secretariat underscores the importance of examining the evidence of State recognition and maintaining a clear distinction from customary international law. General principles should not provide a means of circumventing the requirements applicable to other sources.

167. The Secretariat encourages Member States to consider the conclusions together with their commentaries, particularly their treatment of identification, transposition, substantive rights and obligations, and principles with a limited scope of application. Such consideration can help clarify the implications of the completed text for their legal positions and practice.

168. AALCO can facilitate exchanges on these questions, informed by relevant national jurisprudence and the concerns of government legal advisers. These discussions would support Member States in assessing the conclusions' practical utility while preserving their differing positions and ensuring that Asian and African legal experience informs their interpretation and application.

V. SETTLEMENT OF DISPUTES TO WHICH INTERNATIONAL ORGANIZATIONS ARE PARTIES

A. Background

169. The topic "settlement of international disputes to which international organizations are parties" was first included in the long-term programme of work of the Commission, at its sixty-eighth session (2016) on which a syllabus was prepared by Sir Michael Wood annexed to the report of that session.[106]

170. At its seventy-third session (2022), the Commission took the decision to include the topic in its programme of work and appointed Mr. August Reinisch as special rapporteur for the topic.[107] In addition the Commission also requested the Secretariat to prepare a memorandum providing information on the practice of States and international organizations regarding their international disputes and disputes of a private character, which may be of relevance to its future work on the topic.[108] The Commission expressed its request to States and relevant international organizations to submit information that may be relevant for the topic.[109] Accordingly, the Secretariat communicated a questionnaire prepared by the special rapporteur to the States and concerned international organizations.[110]

171. In 2022 at its seventy-seventh session the General Assembly took note of the Commission's decision to include the topic in its programme of work,[111] and drew the attention of Governments to the importance for the Commission of having their views on the specific issues identified by the Commission on the work of its report on its seventy-third session.[112]

172. At its seventy-fourth session (2023) the Commission considered the first report of the special rapporteur, which was of an exploratory character, and adopted 2 draft conclusions which were introductory character after deliberations.[113] At that session it was also decided that the title of the topic be changed from "Settlement of international disputes to which international organizations are parties" to "Settlement of disputes to which international organizations are parties" with a view to better reflecting the scope of the topic that included disputes of private law character to which international organization were parties.[114]

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[106] UNGA, 'Report of the International Law Commission on the work of its sixty-eighth session' 226 (2 May-10 June and 4 July-12 August 2016) UN Doc. A/71/10

[107] UNGA, 'Report of the International Law Commission on the work of its seventy-third session' 342 (18 April–3 June and 4 July–5 August 2022) UN Doc. A/77/10

[108] ILC, 'Provisions summary record of the 3582nd meeting of the International Law Commission' (16 July 2022) UN Doc. A/CN.4/SR.3582

[109] Ibid

[110] August Reinisch, 'Questionnaire and background to the topic "Settlement of international disputes to which international organizations are parties" <https://legal.un.org/ilc/sessions/74/pdfs/english/io_questionnaire.pdf> accessed 8 September 2026

[111] UNGA Res 77/103 of 7 December 2022

[112] UNGA, 'Report of the International Law Commission on the work of its seventy-third session' (18 April- 3 June and 4 July -5 August 2022) UN Doc. A/77/10

[113] UNGA, 'Report of the International Law Commission on the work of its seventy-fourth session' (24 April–2 June and 3 July–4 August 2023) UN Doc A/78/10 accessed 8 September 2026

[114] ILC, 'Provisions summary record of the 3631st meeting of the International Law Commission' (25 May 2023) UN Doc. A/CN.4/SR.3631

173. At the seventy-fifth session (2024), the Commission had considered the second report of the special rapporteur on the topic as well as the four draft guidelines proposed for its consideration.[115] At that session the Commission also considered a memorandum prepared by the Secretariat to guide the Commission in it its work that contained the responses of States and International Organizations to the questionnaire.[116] Subsequently the Commission considered the report of the Drafting Committee on the topic[117] and provisionally adopted Draft Guidelines 3 to 6.[118]

174. At the previous seventy-sixth session (2025), the Commission had before it the third report of the special rapporteur that focussed on disputes between international organization and private parties and proposed 5 draft guidelines for the consideration of the Commission.[119] However, due to the reduction of the length of the session, the Commission was unable to consider the third report of the special rapporteur in plenary. Instead at its 3702nd meeting, on 28 April 2025, the Commission decided to establish a Working Group of the Whole on the topic chaired by the special rapporteur, to allow for a preliminary exchange of views on the third report.[120]. The Working Group held one meeting, on 20 May 2025 and subsequently at the 3718th meeting of the Commission, on 23 May 2025, it took note of the oral report of the Chair of the Working Group.[121]

B. Consideration of the topic at the seventy-seventh session (2026)

175. While no new report was placed before the Commission for consideration at its seventy-seventh session, the Commission had before it the revised bibliography on the topic and the sample clauses on dispute settlement, illustrating the practice of international organizations, submitted by the special rapporteur.

176. Due to paucity of time the Commission had not considered in plenary the third report on the topic submitted by the special rapporteur for consideration at the previous seventy-sixth session. Accordingly, at its 3731st to 3735th meetings,[122] from 29 April to 6 May 2026, the Commission considered the third report of the special rapporteur.

177. In his third report, the special rapporteur focused on the discussion of disputes between international organizations and private parties. He provided an analysis of the practice of settling such disputes, as well as of policy issues relevant to the work of the Commission on the topic. The special rapporteur also outlined his plans for the future work on the topic. He proposed five draft

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[115] ILC, 'Second report on the settlement of disputes to which international organizations are parties by August Reinisch, Special rapporteur' (1 March 2024) UN Doc. A/CN.4/766

[116] ILC, 'Settlement of disputes to which international organizations are parties: Memorandum by the Secretariat' (10 January 2024) UN Doc. A/CN.5/768

[117] ILC, 'Settlement of disputes to which international organizations are parties: Titles of Part One and Part Two, and texts and titles of Draft Guidelines 3, 4 and 5 as provisionally adopted by the Drafting Committee on 7 and 9 May 2024' (10 May 2024) UN Doc. A/CN.4/L.998

[118] ILC, 'Provisional summary record of the 3673nd meeting' (31 May 2024) UN Doc. A/CN.4/SR.3673

[119] UNGA, 'Report of the International Law Commission on the work of its seventy-sixth session' (28 April- 30 May 2025) UN Doc. A/80/10 (15 August 2025)

[120] ILC, 'Provisional summary record of the 3702nd meeting' (28 April 2025) UN Doc. A/CN.4/SR.3702

[121] ILC, 'Provisional summary record of the 3718th meeting' (23 May 2025) UN Doc. A/CN.4/SR.3718

[122] ILC, 'Provisional summary record of the 3731st meeting' (29 April 2026) UN Doc. A/CN.4/SR.3731; ILC, 'Provisional summary record of the 3732nd meeting' (30 April 2026) UN Doc. A/CN.4/SR.3732; ILC, 'Provisional summary record of the 3733rd meeting' (1 May 2026) UN Doc. A/CN.4/SR.3733; ILC, 'Provisional summary record of the 3734th meeting' (2 May 2026) UN Doc. A/CN.4/SR.3733; ILC, 'Provisional summary record of the 3735th meeting' (6 May 2026) UN Doc. A/CN.4/SR.3735;

guidelines on: the scope of the relevant part of the draft guidelines; resort to means of dispute settlement; the jurisdictional immunity of international organizations; access to justice; and dispute settlement and procedural rule of law, as well as human rights requirements.

178. The Commission considered the third report on the settlement of disputes to which international organizations are parties, focusing principally on disputes between international organizations and private parties.[123] The report was widely commended for the breadth of its research, its detailed survey of institutional and judicial practice, and its attempt to translate a heterogeneous body of sources and materials into practical draft guidelines. The deliberations within the Commission nevertheless revealed broad concern that the proposed provisions did not yet fully reflect the richness of the underlying analysis or provide sufficiently precise guidance to States, international organizations, courts, practitioners and private parties. Members generally supported continuing the work and referring draft guidelines 7 to 11 to the Drafting Committee, but many called for some alterations and refinement.

179. The central policy and legal question that arose from the deliberations on the topic was how to reconcile two legitimate interests: the immunity necessary for international organizations to perform their functions independently, and the right of private parties to obtain access to justice and effective remedies. The members of the Commission broadly agreed that neither interest should be considered in isolation and that a framework would need to preserve the functional independence of international organizations while avoiding outcomes in which individuals, employees, contractors, affected communities or other claimants were left without any realistic avenue of redress or remedy.

180. Within the Commission there was considerable support for structuring the topic according to the identity of the parties rather than attempting to classify disputes as international or non-international by reference to the applicable law. This party-based approach was regarded as pragmatic because disputes involving international organizations often draw simultaneously on treaties, domestic law, an organization's internal law, general principles, contractual provisions and human rights standards. At the same time, several interventions cautioned that the applicable law could not be disregarded. The legal basis of a claim remained important in identifying the competent forum, available remedies, procedural requirements and relevant immunity rules.

181. A recurring concern expressed by some members was relating to the breadth of the expression "private parties". Support emerged for defining it as any person or entity other than a State or an international organization, drawing on terminology already used in the Commission's work on the responsibility of international organizations. Clarification was also considered necessary regarding State-owned enterprises, applicants for employment, consultants, contractors, project beneficiaries, affected communities, non-governmental entities and persons represented collectively. Some members preferred a definition in the text, while others considered the commentary sufficient.

182. The debate emphasized that private parties do not form a homogeneous category. A staff member, a small supplier, a person injured during an organization's operations and a multinational corporation may possess radically different resources and bargaining power. International organizations themselves also vary considerably in mandate, legal framework, membership,

[123] ILC Report, 2026

financial capacity and exposure to litigation. The frequently invoked assumption that the organization is always the stronger party was therefore considered too simplistic. Members favoured a contextual assessment of vulnerability and inequality rather than a fixed "David and Goliath" model.

183. Some members were of the view that the guidelines should distinguish more clearly among different categories of disputes. Contractual and commercial claims often arise under procurement contracts, leases, service agreements and other instruments containing pre-agreed arbitration clauses. Employment disputes were commonly channelled through internal administrative tribunals, although coverage may not extend to job applicants, consultants or short-term personnel. Tortious or delictual claims, human rights complaints and claims arising from an organization's external operations were more complicated as no contractual relationship existed with the organization and no opportunity to negotiate a forum was provided.

184. Several members therefore favoured differentiated guidance for contractual disputes, employment claims, tortious injury, challenges to organizational acts and claims involving human rights or international humanitarian law. Others warned that an exhaustive typology would be difficult to maintain and might undermine the flexible party-based structure. A possible middle course was to retain a broad scope provision while identifying illustrative categories and prescribing more specific considerations for each. Accountability mechanisms, inspection panels, ombuds institutions, compliance bodies and complaints procedures were also viewed as relevant, even where they did not amount to adjudication in the strict sense.

185. Draft guideline 8 proposed that disputes should be settled in good faith and in a spirit of cooperation by means appropriate to the circumstances and nature of the dispute. members generally accepted the need for flexibility and rejected a rigid hierarchy of negotiation, mediation, conciliation, arbitration and judicial settlement. Party autonomy was considered especially important where the parties had agreed in advance on a dispute settlement clause. Non-adjudicatory mechanisms were recognized as valuable in practice because they may be faster, less costly and more adaptable than litigation.

186. Concerns were nevertheless expressed about treating freedom of choice as equally meaningful for all parties. Standard-form contracts, institutional rules and internal procedures may be determined largely by the organization, while arbitration may be prohibitively expensive for employees, local communities or small contractors. Similarly, mediation or review by a body created and staffed by the organization may not correct an underlying inequality of arms. Some members therefore suggested qualifying party autonomy by reference to genuine mutual consent, practical accessibility and substantive fairness.

187. The phrase "spirit of cooperation" divided opinion within the Commission. Some regarded it as a useful expression of constructive dispute resolution; others considered it rooted in inter-State practice and insufficiently precise for relations between organizations and private persons. "Good faith" attracted broader support as a recognized legal principle, although members asked that the commentary explain its operational implications. Several interventions proposed placing greater emphasis on amicable settlement without implying that negotiation should delay or replace access to an independent forum where rights could not otherwise be protected.

188. Draft guidelines 9 and 10 generated the most detailed discussions. Members accepted that immunity protects international organizations from unilateral interference by national authorities and may be indispensable to independent and effective functioning. At the same time, the legal basis and scope of immunity vary among constituent instruments, privileges and immunities conventions, headquarters agreements and domestic legislation. The text should therefore avoid suggesting that every organization enjoys the same immunity in every context.

189. Many members preferred "shall be respected" to "should be respected" where immunity arose from binding law. Some also proposed deleting "jurisdictional" or expressly including immunity from enforcement and execution. Others considered that references to the functional purpose of immunity should be retained or reformulated using established language, such as immunity necessary for the fulfilment of an organization's purposes or for the independent and effective performance of its functions.

190. There was no consensus that immunity should automatically depend on the availability of an alternative remedy. Members noted that courts have adopted differing approaches, and that some authorities treat alternative means as relevant without making them a universal legal precondition. Nonetheless, strong support emerged for stating more clearly that immunity must operate alongside obligations to provide appropriate modes of settlement where such obligations exist. Proposals also called for addressing waiver where immunity would impede the course of justice, while preserving the separate protection ordinarily applicable to execution measures.

191. Access to justice was understood in practical rather than merely formal terms. A mechanism may exist on paper yet remain inaccessible because of cost, delay, geographical distance, language, standing rules, restricted jurisdiction or lack of an effective remedy. Members suggested that the guidelines should identify the relevant duty-bearer—whether the organization, its member States, the host State or those negotiating a constituent instrument or headquarters agreement—and distinguish recommendations for existing organizations from safeguards to be incorporated when new institutions or agreements are created.

192. Some members urged the Commission to state affirmatively that private parties' right of access to justice must be respected and to recommend appropriate alternative mechanisms whenever immunity bars national proceedings. Others cautioned that the legal sources, and the scope of such a general obligations required more careful treatment. The discussion nevertheless converged on the practical proposition that organizations and States should avoid institutional arrangements combining broad immunity with an absence of credible procedures for hearing claims.

193. Draft guideline 11, requiring adjudicatory mechanisms to conform to procedural rule-of-law and human rights requirements, received broad support in principle. Independence and impartiality of adjudicators, due process, equality of arms and fair-trial guarantees were identified as core human rights standards. Several members preferred the more technically precise expression "right to a fair trial" over the broader term "procedural rule of law", while others proposed expressly adding accessibility, effectiveness and constitutional requirements.

194. Members also emphasized that procedural quality could not compensate for the complete absence of access to justice. Draft guidelines 10 and 11 should therefore operate together: the first ensuring a realistically available forum and the second ensuring that the forum meets appropriate

standards. Particular care was urged for human rights claims and injuries arising from external operations, where affected persons often lack contractual protections and may fall outside internal administrative systems.

195. The prevailing view was that the third report provided a strong evidentiary foundation but that the draft guidelines required greater granularity, clearer addressees and closer alignment with the diversity of organizations and claims. The Commission was encouraged to combine codification of established practice with measured progressive development, while avoiding both an unqualified endorsement of immunity and an overly broad rule that could expose financially constrained organizations to liability in multiple forums.

196. At its 3735th meeting, on 6 May 2026, the Commission referred draft guidelines 7, 8, 9, 10 and 11, as contained in the third report of the special rapporteur, to the Drafting Committee, taking into account the views expressed in the debate in the plenary.

197. At its 3748th meeting, on 29 May 2026, the Chair of the Drafting Committee introduced the report of the Committee on the topic and adopted the draft guidelines on settlement of disputes to which international organizations are parties on first reading.

198. At its 3776th meeting, on 23 July 2026, the Commission adopted the commentaries to the aforementioned draft guidelines.

199. At the same meeting, the Commission decided, in accordance with articles 16 to 21 of its statute, to transmit the draft guidelines, through the Secretary-General, to Governments and relevant international organizations for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 December 2027.

C. Text of the draft guidelines on settlement of disputes to which international organizations are parties adopted by the Commission on first reading

Settlement of disputes to which international organizations are parties

Part One

Introduction

Guideline 1

Scope

The present draft guidelines concern the settlement of disputes to which international organizations are parties.

Guideline 2

Use of terms

For the purposes of the present draft guidelines:

(a) “international organization” means an entity possessing its own international legal personality, established by a treaty or other instrument governed by international law, that

may include as members, in addition to States, other entities, and has at least one organ capable of expressing a will distinct from that of its members;

(b) "private party" means a person or entity other than a State or an international organization;

(c) "dispute" means a disagreement concerning a point of law or fact in which a claim or assertion is met with refusal or denial;

(d) "means of dispute settlement" refers to negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of resolving disputes.

Part Two

Disputes between international organizations as well as disputes between international organizations and States

Guideline 3

Scope of the present Part

The present Part addresses disputes between international organizations as well as disputes between international organizations and States.

Guideline 4

Resort to means of dispute settlement

Disputes between international organizations or between international organizations and States should be settled in good faith and in a spirit of cooperation by means of dispute settlement that may be appropriate to the circumstances and the nature of the dispute.

Guideline 5

Accessibility of means of dispute settlement

Means of dispute settlement, including arbitration and judicial settlement, as appropriate, should be made more widely accessible for the settlement of disputes between international organizations or between international organizations and States.

Guideline 6

Requirements for arbitration and judicial settlement

Arbitration and judicial settlement shall conform to the requirements of independence and impartiality of adjudicators and due process.

Part Three

Disputes between international organizations and private parties

Guideline 7

Scope of the present Part

The present Part addresses disputes between international organizations and private parties.

Guideline 8

Resort to means of dispute settlement

Disputes between international organizations and private parties should be settled in good faith and in a spirit of cooperation by means of dispute settlement that may be appropriate to the circumstances and the nature of the dispute, with due regard for the respective positions of the parties and possible disparity between them.

Guideline 9

Immunity of international organizations

Serving the purpose of ensuring the independent and effective performance of their functions, the immunity of international organizations is to be respected.

Guideline 10

Immunity and dispute settlement

International organizations, which enjoy immunity, shall endeavour to settle disputes with private parties. In this context, they shall make provision for appropriate modes of settlement of disputes. Such modes shall ensure the right of access to justice of private parties.

Guideline 11

Access to justice

In order to ensure the right of access to justice, judicial settlement or reasonable alternative means of dispute settlement, which may include arbitration or administrative tribunals, shall be made more widely accessible for the settlement of disputes between international organizations and private parties. Such means shall be effective and in no circumstances amount to arbitrariness or denial of justice.

Guideline 12

Requirements for means of dispute settlement of an adjudicatory character

Means of dispute settlement of an adjudicatory character shall conform to procedural rule of law as well as human rights requirements, including the independence and impartiality of adjudicators and due process.

D. Present Status and Future Work

200. At present the third report of the special rapporteur and deliberations in the Commission at the seventy-seventh session focused on disputes between international organizations and private parties. To facilitate its deliberations and adoption of the set of guidelines on first reading the

Commission had before it the information provided by States and international organizations in response to the questionnaire. The Commission took into account the free choice of the most appropriate means of dispute settlement, the need to secure the independent functioning of international organizations, the right of access to justice of private parties and the rule of law and human rights requirements in regard to adjudicatory forms of dispute settlement. Further the Drafting Committee took into consideration the views expressed in the plenary of the Commission and made suitable amendments to the draft guidelines proposed in the third report.

201. Based on the comments received from State and international organizations which would be submitted by December 2027, the draft guidelines could be adopted on second reading in 2028.

E. Comments and observations of the AALCO Secretariat

202. The focus of the deliberations at the seventy-seventh session of the Commission on disputes between international organizations and private persons constitute one of the most controversial areas of international law which is rife with practice that is inconsistent and makes the formulation of guidelines or rules for general application difficult to identify. However, it must be understood that there lies a high degree of variation in the constituent instruments of international organizations or other agreements that lay down obligations in relation to immunity and dispute settlement.

203. At the heart of this topic lies the central of question to immunity of international organizations before national courts, that hinges upon the balance that is sought to be achieved between immunity and right to access to justice of private individuals and entities. Human Rights tribunals and decisions of national courts have highlighted the need to secure avenues for dispute resolution for private persons, while recognizing the need to the secure the immunity of the international organization with a view to enable it to continue to perform its mandate and functions in an independent manner.

204. Questions of immunity have tended to evoke strong responses within the Commission as well as from the States in their written observations as well as comments in the Sixth Committee and forums such as AALCO and other regional organizations. In light of these observations, it becomes vital for AALCO Member States that the work of the Commission and scope of materials is of the widest possible geographical ambit including decisions and other evidence of State practice and *opinio juris* of Asian and African States. Further, appreciating the weight of the evidence as well as taking a contextual approach to understanding of these sources also remains to be a priority.

205. Due to the particular nature of the topic concerning disputes, the role of national court decisions seems to be particularly relevant. AALCO Member States are encouraged to consider including in their statements reference to their national court decisions or other public decisions that weigh into the topic. The Secretariat invites Member States to consider the entire set of draft guidelines and commentaries that have been adopted on first reading by the Commission and comments on which are requested by the General Assembly.

VI. PREVENTION AND REPRESSION OF PIRACY AND ARMED ROBBERY AT SEA

A. Background

206. The Commission included "Prevention and repression of piracy and armed robbery at sea" in its long-term programme of work in 2019. A syllabus accompanying its report outlined the proposed scope and approach. The General Assembly took note of the topic's inclusion later that year. In 2022, the Commission placed it on its programme of work and appointed Mr Yacouba Cissé as special rapporteur.[124]The Commission first addressed the scope of the project and the definitions of piracy and armed robbery at sea. On the basis of Mr Cissé's first report and a Secretariat memorandum, it provisionally adopted draft articles 1 to 3 in 2023. His second report, considered in 2024, examined cooperation through international organisations, regional arrangements and bilateral agreements.

207. The Commission referred proposed draft articles 4 to 7 to the Drafting Committee. The Committee provisionally adopted draft article 4, but the Commission received that text for information only.[125] Mr Cissé resigned as special rapporteur in 2024, and the Commission appointed Mr Louis Savadogo in his place. In 2025, Mr Savadogo submitted a note identifying legal issues and an approach for the next stage of work. A Working Group of the Whole considered the note, and the Commission took note of the Working Group Chair's oral report.[126]

B. First Report by the special rapporteur, Mr. Louis Savadogo

208. At the seventy-seventh session in 2026, Mr Louis Savadogo submitted his first report as special rapporteur on the topic. Building on the work undertaken by his predecessor, the report examines the rules and practices through which States prevent piracy and armed robbery at sea and respond when offences occur. It draws on multilateral and regional instruments, national legislation, policing measures, criminal proceedings and judicial decisions.[127]

209. The special rapporteur treats prevention and repression as connected aspects of the response to maritime crime. In the report, prevention encompasses measures intended to reduce the risk of offences, while repression encompasses criminalisation, investigation, prosecution and punishment. He notes that article 100 of the United Nations Convention on the Law of the Sea (UNCLOS) requires cooperation in the repression of piracy without prescribing its precise form. Accordingly, the report examines the different means by which States cooperate, while taking UNCLOS as the central framework for the topic.[128]

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[124] UNGA, 'Report on the work of its seventy-first session' (2019) UN Doc A/74/10, para 290 and annex III; UNGA Res 74/186 (18 December 2019) UN Doc A/RES/74/186; International Law Commission, 'Report on the work of its seventy-third session' (2022) UN Doc A/77/10, para 239.

[125] UNGA, 'Report on the work of Its seventy-fourth session' (2023) UN Doc A/78/10, ch VI; International Law Commission, 'Report on the work of Its seventy-fifth session' (2024) UN Doc A/79/10, paras 79-81.

[126] UNGA, 'Report on the work of its seventy-fifth session' (2024) UN Doc A/79/10, para 82; special rapporteur, 'Note on Prevention and Repression of Piracy and Armed Robbery at Sea' (2025) UN Doc A/CN.4/786; UNGA, 'Report on the work of the International Law Commission at its seventy-sixth session' (2025) UN Doc A/80/10, paras 405–408.

[127] First Report on Prevention and Repression of Piracy and Armed Robbery at Sea' (2026) UN Doc A/CN.4/791, paras 9-10, 16-17.

[128] ibid paras 11-13, 16; United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, art 100.

210. The report gives particular attention to questions that arise in applying that framework. These include armed robbery within coastal State jurisdiction; the use of autonomous or remotely operated craft and interference with maritime systems; armed personnel aboard merchant ships; naval operations; pursuit into territorial waters; and the grounds and safeguards for enforcement at sea. It also examines extradition, assistance to victims and the bases on which national courts may exercise criminal jurisdiction.[129]

211. To advance the Commission's work, the special rapporteur proposed 18 draft articles, numbered 5 to 22. They address technological developments, enforcement at sea, criminal responsibility and jurisdiction, assistance and safeguards for affected persons, judicial cooperation, extradition, confiscation and preventive measures. The final proposed article concerns the relationship between the draft articles, UNCLOS and other relevant instruments. These are the special rapporteur's proposals; their submission did not itself change the status of the texts previously considered by the Commission.[130]

212. The report also explains how the proposals relate to draft articles 5 to 7 submitted by Mr Cissé in 2024. In Mr Savadogo's view, the earlier proposed draft article 5 substantially overlaps with draft article 4, which the Drafting Committee provisionally adopted in 2024, and should not be retained. He incorporated material from the earlier proposed draft articles 6 and 7 into his new proposal on criminal jurisdiction, without accepting all of their elements. He indicated that his next report would take account of comments from Commission members and States.[131]

C. Consideration of the topic at the seventy-seventh session (2026)

213. The Commission considered the special rapporteur's first report at eight meetings between 19 and 29 May 2026. Members welcomed its attention to the practical conditions in which piracy and armed robbery at sea are prevented and prosecuted. They emphasised the risks to crews, passengers and maritime trade, as well as continuing gaps in enforcement capacity. Several members considered that cooperation should be central to the project, including information sharing, joint operations, transfer arrangements and assistance with criminal proceedings.[132]

214. A principal issue was the need to maintain a clear legal distinction between the two offences. Members recalled that piracy and armed robbery at sea arise in different maritime spaces and engage different jurisdictional rules. They cautioned that provisions dealing with enforcement or prosecution should not confer powers in a coastal State's waters by treating armed robbery as though it were piracy. Members also stressed that the Commission's work should complement UNCLOS and respect the rights of coastal and flag States.[133]

215. The proposals on new technology received support in principle. Members considered it useful to address offences involving autonomous or remotely operated craft, but favoured wording capable of accommodating further technological developments. Views differed on the proposed

[129] First Report on Prevention and Repression of Piracy and Armed Robbery at Sea' (2026) UN Doc A/CN.4/791 chapters I-VI
[130] Ibid annex II; UNGA, 'Report on the work of its seventy-seventh Session' (2026) UN Doc A/81/10, para 147.
[131] First Report on Prevention and Repression of Piracy and Armed Robbery at Sea' (2026) UN Doc A/CN.4/791 paras 151-52.
[132] UNGA, 'Report on the Work of Its seventy-seventh Session' (2026) UN Doc A/81/10, paras 148, 162-66.
[133] Ibid paras 167-70.

treatment of maritime cybercrime: a provision drawn too broadly could reach conduct unrelated to piracy or armed robbery at sea, while a narrow definition could omit acts that facilitate either offence.[134]

216. The proposed enforcement provisions prompted closer scrutiny. Members questioned whether the draft article on enforcement should require the seizure of suspected vessels and called for clearer treatment of the permissible use of force and applicable human rights safeguards. The proposal concerning pursuit into another State's territorial sea was particularly sensitive. Members recalled the limits in article 111 of UNCLOS and stressed that any operation in a third State's territorial sea would require its consent; some doubted that the proposal reflected existing customary international law.[135]

217. Criminal jurisdiction was another focus of the debate. Members encouraged separate treatment of piracy and armed robbery at sea and questioned whether the proposed obligation to extradite or prosecute could be applied to both offences on the same basis. They also raised concerns about competing claims to jurisdiction, particularly where a vessel is seized through a joint operation or by privately contracted security personnel. In considering the proposed provisions on confiscation, assistance to victims and arrested persons, members called for protection of third-party property rights, practical arrangements for seafarers and safeguards consistent with international human rights law.[136]

218. More broadly, members asked the special rapporteur to identify more clearly which proposals rest on established international law and which involve progressive development. They cautioned against drawing general obligations from limited or uneven State practice, or transferring provisions from other criminal law instruments without accounting for the particular legal framework governing activities at sea. Views also differed on the eventual form and level of detail of the Commission's work.[137]

219. At its meeting on 19 May 2026, the Commission referred proposed draft articles 5 to 14 to the Drafting Committee, taking account of the views expressed in plenary. The special rapporteur indicated that he would revisit several proposals in light of the debate, including those concerning the distinction between the offences, enforcement powers and assistance to victims. On 17 July 2026, the Commission took note of the Drafting Committee Chair's interim oral report, which was presented for information only. The Committee's revisions and the status of its six provisionally adopted texts are addressed in the following section.[138]

D. Progress in the Drafting Committee

220. The Drafting Committee devoted nine meetings to the topic in 2026. Before examining individual proposals, it considered how the new provisions should fit with draft articles 1 to 3, provisionally adopted by the Commission, and draft article 4, provisionally adopted by the Committee in 2024. It decided to address measures for prevention and repression before provisions

[134] Ibid paras 172-74.
[135] Ibid paras 175-80; United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, art 111.
[136] ILC (n 1) paras 189-95.
[137] Ibid paras 169-71, 205-208.
[138] Ibid paras 149-50, 209-23.

on cooperation, and to determine whether piracy and armed robbery at sea required separate treatment according to the subject of each provision.[139]

221. The Committee provisionally adopted six provisions: draft article 3 *bis* on autonomous or remotely operated ships or aircraft; draft article 4 bis on criminalisation under national law; draft article 5 on criminal jurisdiction with regard to piracy; draft article 5 *bis* on criminal jurisdiction with regard to armed robbery at sea; draft article 5 *ter* on other jurisdictional bases; and draft article 5 *quater* on cooperation to facilitate the exercise of criminal jurisdiction. The last four provisions emerged from the Committee's consideration of the special rapporteur's proposed draft article 11. The numbering and arrangement thus differ substantially from the proposals in his report.[140]

222. On 17 July 2026, the Chair presented an interim oral report and a consolidated text showing the provisions prepared to date. The report was submitted for information only. The Commission took note of it but was not asked to provisionally adopt the six new provisions or their commentaries at this session.[141]

E. Summary of discussions on draft articles

223. The Drafting Committee's discussions on new technologies centred on how to accommodate them without changing the definitions of piracy and armed robbery at sea. It agreed that either offence may be committed by or against an autonomous or remotely operated ship or aircraft, and placed this clarification in draft article 3 *bis*. The Committee avoided fixed technical definitions that could become outdated. It left the relationship between maritime cybercrime and the two offences to the commentary, since cybercrime may also involve conduct outside the scope of the draft articles.[142]

224. On criminalisation, draft article 4 *bis* calls for legislative and other appropriate measures to establish both offences under national criminal law, including attempts and conspiracy. The Committee did not repeat incitement and intentional facilitation because these acts are already covered by the definitions adopted earlier.[143]

225. The Committee gave separate treatment to the jurisdictional rules for the two offences. Draft article 5 requires States to establish criminal jurisdiction over piracy. It also provides for the seizure of pirate ships or aircraft and for judicial action by the seizing State or another State under a relevant transfer agreement. Draft article 5 *bis* recognises coastal State jurisdiction over armed robbery at sea and calls for measures enabling investigation and prosecution. The Committee intended this wording to take account of differences in national capacity and to preserve prosecutorial discretion.[144]

226. Draft article 5 *ter* preserves other bases on which States may exercise criminal jurisdiction under applicable international and domestic law. Draft article 5 *quater* addresses cooperation to

[139] Prevention and Repression of Piracy and Armed Robbery at Sea: Statement of the Chair of the Drafting Committee' (17 July 2026) 1-3.
[140] Ibid 2-3, 5-10, annex.
[141] ILC Report, 2026,10, para 150; ibid 11-12
[142] Prevention and Repression of Piracy and Armed Robbery at Sea: Statement of the Chair of the Drafting Committee (17 July 2026) 3-4.
[143] Ibid 4-6.
[144] Ibid 9-11, 14.

facilitate the exercise of that jurisdiction, including agreements and arrangements, as appropriate and in accordance with UNCLOS.[145]

F. Text of the draft conclusions provisionally adopted thus far by the Commission Prevention and repression of piracy and armed robbery at sea

Article 1

Scope

The present draft articles apply to the prevention and repression of piracy and armed robbery at sea.

Article 2

Definition of piracy

1. Piracy consists of any of the following acts:

(a) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph a) or b).

2. Paragraph 1 shall be read in conjunction with the provisions of article 58, paragraph 2, of the United Nations Convention on the Law of the Sea.

Article 3

Definition of armed robbery at sea

Armed robbery at sea consists of any of the following acts:

(a) any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea;

(b) any act of inciting or of intentionally facilitating an act described in subparagraph a).

[145] Ibid 9-11.

G. Present and future work on the topic

227. The Commission has provisionally adopted draft articles 1 to 3, concerning scope and the definitions of piracy and armed robbery at sea. Draft article 4 was provisionally adopted by the Drafting Committee in 2024. At the seventy-seventh session, the Drafting Committee provisionally adopted six further provisions on autonomous or remotely operated craft, criminalisation, jurisdiction and cooperation. The Commission took note of the Committee's 2026 interim report for information only and it has not yet provisionally adopted those provisions.[146]

228. Work remains on the other proposals in the special rapporteur's first report, including enforcement powers, assistance to victims and safeguards for arrested persons. The Committee may return to draft article 5 if further provisions on enforcement are needed. The proposals on assistance to victims and safeguards for arrested persons were not incorporated into the six provisions it provisionally adopted in 2026.[147]

229. The special rapporteur has indicated that his 2027 report will develop the study in light of comments from Commission members and States.[148] The distinction between piracy and armed robbery at sea, and the relationship of any further provisions with UNCLOS and State practice, will remain central to that work.[149]

H. Comments and observations of the AALCO Secretariat

230. The AALCO Secretariat notes the continuing importance of preventing and repressing piracy and armed robbery at sea for Member States in Africa and Asia. These offences threaten the safety of seafarers, maritime navigation and international trade. The Commission's work provides an opportunity to clarify applicable rules and strengthen practical cooperation, while preserving the distinction between the offences and respecting coastal and flag State jurisdiction under the United Nations Convention on the Law of the Sea (UNCLOS).

231. Clarity concerning criminal jurisdiction and enforcement powers remains particularly important. Careful explanations of the legal bases and conditions governing investigation, seizure, arrest, transfer and prosecution would enhance the practical utility of the draft articles and commentaries. Further examination of the application and limits of hot pursuit and the legal framework governing foreign naval operations could also assist national authorities, with due regard to coastal State sovereignty and applicable navigational rights.

232. The experience of Asian and African States can contribute substantially to the Commission's development of the draft articles. Regional and sub-regional arrangements offer examples of information sharing, coordinated responses and assistance adapted to particular maritime conditions. The Secretariat encourages consideration of these arrangements and their

[146] Ibid paras 143-50; Prevention and Repression of Piracy and Armed Robbery at Sea: Statement of the Chair of the Drafting Committee (17 July 2026) 1-2, 11-14.
[147] Ibid 7, 11-12; International Law Commission, 'Report on the Work of Its seventy-seventh Session' (2026) UN Doc A/81/10, paras 149-50.
[148] Prevention and Repression of Piracy and Armed Robbery at Sea: Statement of the Chair of the Drafting Committee (17 July 2026) para 152.
[149] ILC Report, 2026,paras 167-70, 207-12.

implementation so that the Commission's work reflects geographically representative practice and differences among national legal systems and operational capacities.

233. The Secretariat encourages Member States to review their domestic legal frameworks and identify practical difficulties in addressing these offences. Technical assistance and specialised training, including on evidence preservation and coordination among maritime authorities, investigators and prosecutors, could support these efforts.

234. AALCO Member States are encouraged to share national legislation, judicial decisions and operational experience, particularly on criminal jurisdiction, transfer and mutual legal assistance arrangements, and regional cooperation. Their views on autonomous vessels, maritime cyber incidents, private armed security, assistance to victims and safeguards for arrested persons would also assist the Commission in assessing the proposed provisions against State practice. Particular attention should be given to the capacity of States to investigate and prosecute offences occurring within their waters.

235. The forthcoming Annual Session will provide an opportunity for Member States to exchange these experiences, identify common concerns and highlight questions requiring further consideration by the Commission. This engagement can help ensure that the draft articles and commentaries remain responsive to practical needs and adequately reflect Asian and African perspectives.

VII. SUBSIDIARY MEANS FOR THE DETERMINATION OF RULES OF INTERNATIONAL LAW

A. Background

236. The Commission, at its seventy-third session (2022), decided to include the topic "Subsidiary means for the determination of rules of international law" in its programme of work and appointed Mr. Charles Chernor Jalloh as special rapporteur. The General Assembly, in paragraph 26 of its resolution 77/103 of 7 December 2022[150], subsequently took note of the decision of the Commission to include the topic in its programme of work.

237. At its seventy-fourth session (2023), the Commission considered the first report of the special rapporteur,[151] and a memorandum by the Secretariat identifying elements in the previous work of the Commission that could be particularly relevant to the topic.[152] Following the debate in plenary, the Commission decided to refer to the Drafting Committee draft conclusions 1 to 5 as contained in the first report of the special rapporteur. The Commission provisionally adopted draft conclusions 1, 2 and 3, together with commentaries, and took note of the report of the Drafting Committee on draft conclusions 4 and 5.

238. At its seventy-fifth session (2024), the Commission considered the second report of the special rapporteur[153] and a second memorandum by the Secretariat identifying elements in the case law of international courts and tribunals, and other bodies, which would be particularly relevant to the topic.[154] The Commission decided to refer to the Drafting Committee draft conclusions 6 to 8 as contained in the second report of the special rapporteur. Subsequently, the Commission provisionally adopted draft conclusions 4 to 8 with commentaries.

239. At its seventy-sixth session (2025), the Commission considered the third report of the special rapporteur[155] and a preliminary bibliography,[156] and decided to refer draft conclusions 9 to 13 contained in that report to the Drafting Committee. The Drafting Committee provisionally adopted a full set of draft conclusions on first reading, including draft conclusions 9 to 13. At the same session, the Commission took note of the report of the Drafting Committee. As a consequence of the reduction of the length of the seventy-sixth session, the Commission was unable to adopt the report of the Drafting Committee and conclude the first reading on the topic at that session.

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[150] United Nations General Assembly, 'Report of the International Law Commission on the work of its seventy-third session' UNGA Res 77/103 (7 December 2022) UN Doc A/RES/77/103.
[151] ILC, 'First report on subsidiary means for the determination of rules of international law Charles Chernor Jalloh, special rapporteur' (13 February 2023) UN Doc. A/CN.4/770.
[152] UNGA, 'Memorandum by the Secretariat- Elements in the previous work of the International Law Commission that could be particularly relevant to the topic' (8 February 2023) UN Doc. A/CN.4/759.
[153] ILC, 'Second report on subsidiary means for the determination of rules of international law, Charles Chernor Jalloh, special rapporteur' (30 January 2024) UN Doc. A/CN.4/769.
[154] UNGA, 'Memorandum by the Secretariat- Subsidiary means for the determination of rules of international law (17 January 2024) UN Doc. A/CN.4/765.
[155] ILC, 'Third report on subsidiary means for the determination of rules of international law Charles Chernor Jalloh, special rapporteur' (29 January 2025) UN Doc. A/CN.4/781.
[156] ILC, 'Addendum Preliminary selected bibliography on subsidiary means for the determination of rules of international law prepared by the special rapporteur' (24 March 2025) UN Doc. A/CN.4/781/Add.1.

B. Consideration of the topic at the seventy-seventh session (2026)

240. At its 3729th meeting, on 27 April 2026, the Commission considered the report of the Drafting Committee and adopted the entire set of draft conclusions on subsidiary means for the determination of rules of international law on first reading. At the same meeting, the Commission decided to establish an open-ended Working Group, chaired by the special rapporteur, Mr. Charles Chernor Jalloh, to assist him in the preparation of the draft commentaries to the first reading text of the draft conclusions.

241. At its 3771st to 3775th meetings, from 21 to 23 July 2026, the Commission adopted the commentaries to the aforementioned draft conclusions.

242. At its 3775th meeting, on 23 July 2026, the Commission decided, in accordance with articles 16 to 21 of its statute, 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 2027.

243. At its 3775th meeting, on 23 July 2026, the Commission expressed its deep appreciation for the outstanding contribution of the special rapporteur, Mr. Charles Chernor Jalloh, which had enabled the Commission to bring to a successful conclusion its first reading of the draft conclusions on subsidiary means for the determination of rules of international law.

C. Text of the draft conclusions on subsidiary means for the determination of rules of international law adopted by the Commission on first reading[157]

Subsidiary means for the determination of rules of international law

Part One

Introduction

Conclusion 1

Scope

The present draft conclusions concern the use of subsidiary means for the determination of rules of international law.

Part Two

General provisions

Conclusion 2

Categories of subsidiary means for the determination of rules of international law

[157] Member States may also wish to consult the detailed commentaries to the draft conclusions contained in the report of the International Law Commission on the work of its seventy-seventh session, which provide further explanation of the scope, rationale and application of the draft conclusions; ILC, 'Report of the International Law Commission on the work of its seventy-seventh session' (2026) UN Doc A/81/10, chap VI.

Subsidiary means for the determination of rules of international law include:

(a) decisions of courts and tribunals;

(b) teachings;

(c) any other means generally used to assist in determining rules of international law.

Conclusion 3

Nature and function of subsidiary means

1. Subsidiary means are not a source of international law. The function of subsidiary means is to assist with the determination of the existence and content of rules of international law.

2. The use of materials as subsidiary means for the determination of rules of international law is without prejudice to their use for other purposes.

Conclusion 4

General criteria for the assessment of subsidiary means for the determination of rules of international law

When assessing the weight of subsidiary means for the determination of rules of international law, regard should be had to, *inter alia*:

(a) their degree of representativeness;

(b) the quality of the reasoning;

(c) the expertise of those involved;

(d) the level of agreement among those involved;

(e) the reception by States and other entities;

(f) where applicable, the mandate conferred on the body.

Part Three

Decisions of courts and tribunals

Conclusion 5

Decisions of courts and tribunals

1. Decisions of international courts and tribunals, in particular of the International Court of Justice, are a subsidiary means for the determination of the existence and content of rules of international law.

2. Decisions of national courts may be used, in certain circumstances, as a subsidiary means for the determination of the existence and content of rules of international law.

Conclusion 6

Absence of legally binding precedent in international law

Decisions of international courts or tribunals may be followed on points of law where those decisions address the same or similar issues as those under consideration. Such decisions do not constitute legally binding precedent unless otherwise provided for in a specific instrument or rule of international law.

Conclusion 7

Weight of decisions of courts and tribunals

When assessing the weight of decisions of courts or tribunals, regard should be had to, in addition to the criteria set out in draft conclusion 4, *inter alia*:

(a) whether the court or tribunal has been conferred with a specific competence with regard to the application of the rule in question;

(b) the extent to which the decision is part of a body of concurring decisions; and

(c) the extent to which the reasoning remains relevant, taking into account subsequent developments.

Part Four

Teachings

Conclusion 8

Teachings

Teachings, especially those generally reflecting the coinciding views of persons with competence in international law from the various legal systems and regions of the world, are a subsidiary means for the determination of the existence and content of rules of international law. In assessing the representativeness of teachings, due regard should also be had to*, inter alia*, gender and linguistic diversity.

Conclusion 9

Weight of teachings

When assessing the weight of teachings, regard should be had to, as appropriate, the criteria set out in draft conclusion 4.

Part Five

Other means generally used to assist in determining rules of international law

Conclusion 10

Expert bodies

The works of bodies consisting of experts serving in their personal capacity may serve as a subsidiary means for the determination of the existence and content of rules of international law.

Conclusion 11

Weight of the works of expert bodies

When assessing the weight of the works of expert bodies, regard should be had to, in addition to the criteria set out in draft conclusion 4:

(a) the character and normative value of the works produced by the expert body concerned; (b) the methodology used in producing its works on a particular issue;

(c) the extent to which the works remain relevant, taking into account subsequent developments;

(d) the extent to which the body is comprised of experts with competence in international law; and

(e) the process and basis of selection of the experts.

Conclusion 12

Resolutions and other texts produced by international organizations or at intergovernmental conferences

Resolutions and other texts produced by international organizations or at intergovernmental conferences may be used as subsidiary means for the determination of the existence and content of rules of international law.

Conclusion 13

Weight of resolutions and other texts produced by international organizations or at intergovernmental conferences

When assessing the weight of resolutions and other texts produced by international organizations or at intergovernmental conferences, regard should be had to, as appropriate, in addition to the criteria set out in draft conclusion 4, the circumstances surrounding their production.

D. Present status and future work

244. At its seventy-seventh session in 2026, the Commission adopted on first reading the complete set of 13 draft conclusions, together with the accompanying commentaries, on "Subsidiary means for the determination of rules of international law". The Commission subsequently decided to transmit the draft conclusions and commentaries, through the Secretary-General, to Governments for comments and observations, with a request that such comments and observations be submitted by 1 December 2027.

245. The transmission of the draft conclusions and commentaries to Governments marks an important stage in the progressive development and codification of the topic. The period will provide States, international organizations and other relevant actors with an opportunity to examine the draft conclusions in light of their respective legal systems, judicial and arbitral

practice, scholarly contributions and other relevant materials, and to communicate their views to the Commission.

246. Following consideration of comments and observations from Governments and other relevant actors, a second reading may be undertaken, enabling the Commission to refine the draft conclusions and commentaries and make a final recommendation to the General Assembly on the outcome of the topic.

E. Comments and observations of the AALCO Secretariat

247. The AALCO Secretariat takes note of the progress made by the International Law Commission, including the adoption of the draft conclusions on first reading. The Secretariat notes that the topic is of considerable practical significance for States, particularly because judicial decisions, scholarly writings, expert-body outputs and resolutions of international organizations are frequently relied upon in the interpretation and application of international law. The Commission's work seeks to provide greater methodological clarity while maintaining the distinction between subsidiary means and the sources of international law.

248. In this regard, the AALCO Secretariat also highlights the webinar on "Subsidiary Means for the Determination of Rules of International Law: Developments and Prospects", jointly organised by AALCO and Allameh Tabataba'i University, Islamic Republic of Iran, on 24 February 2026, as part of the commemorative activities marking AALCO's Seventieth Anniversary (AALCO@70). The webinar featured three eminent experts, Prof. Charles Chernor Jalloh, Prof. Sienho Yee and Prof. Mohamed Helal, who examined key aspects of the Commission's ongoing work on the topic. The discussions highlighted the importance of distinguishing subsidiary means from the formal sources of international law, while recognising their evidentiary and interpretative functions in the identification and determination of legal rules, including in the context of treaty interpretation and customary international law. The experts also emphasised the need for methodological rigour and genuine representativeness in the assessment of subsidiary means, as well as the importance of enhancing the participation of Asian and African States in the Commission's deliberations. The webinar provided a valuable platform for exchanging regional and scholarly perspectives on the Commission's work and reinforced the importance of ensuring that the development and application of subsidiary means reflect diverse legal traditions and contributions from across regions.

249. Of particular relevance to AALCO Member States is the Commission's emphasis on representativeness, including diversity of legal systems and regions, as a criterion in assessing subsidiary means. The specific reference to gender and linguistic diversity in relation to teachings may further contribute to a broader and more inclusive understanding of international legal scholarship.

250. The recognition of a broad category of "other means" is also significant. By expressly including the works of expert bodies and resolutions and other texts of international organizations and intergovernmental conferences, the draft conclusions acknowledge contemporary forms of international legal practice while retaining the requirement that such materials be assessed according to their particular characteristics and weight.

251. The Secretariat further notes that the draft conclusions reaffirm the non-binding and auxiliary character of judicial decisions in general international law. While prior decisions may have significant persuasive value and may contribute to consistency in legal reasoning, the absence of a general doctrine of *stare decisis* remains an important feature of the international legal system.

252. The completion of the first reading also provides an opportunity for AALCO Member States to contribute their observations and comments during the period leading to 1 December 2027. Particular attention could be given to ensuring that the development and assessment of subsidiary means adequately reflect the diverse legal traditions, regional jurisprudence and scholarly contributions of African and Asian States.

253. The AALCO Secretariat respectfully encourages Member States to examine the draft conclusions and provide comments and observations to the Secretary-General within the period prescribed by the Commission. Such engagement would contribute to ensuring that the further development of the topic takes account of a broad range of State perspectives and legal traditions.

VIII. NON-LEGALLY BINDING INTERNATIONAL AGREEMENTS

A. Background

254. At its seventy-fourth session in 2023, the Commission decided to include the topic "Non-legally binding international agreements" in its programme of work and appointed Mr. Mathias Forteau as special rapporteur. Subsequently, the General Assembly, in paragraph 7 of its resolution 78/108 of 7 December 2023, took note of the Commission's decision to include the topic in its programme of work.

255. At its seventy-fifth session (2024) the special rapporteur, Mr. Mathias Forteau, presented his first report on the topic that aimed to frame the general direction, scope, questions to be examined, and form of the final outcome, without proposing draft provisions at that stage. During the deliberations at the Commission, members generally welcomed the special rapporteur's first report and its focus on discussing general issues without proposing draft provisions at this preliminary stage. The discussions focused on matters relating to terminology and scope among other issues and broad support was expressed for special rapporteur's call to focus the Commission's work on the practical aspects rather than purely theoretical considerations.[158]

256. At the previous seventy-sixth session (2025)[159] the Commission had before it the second report of the special rapporteur,[160] along with an annex containing 6 proposed draft conclusions. However, due to the reduction in the length of the session the Commission could not consider the second report at that session. The Commission held only a preliminary exchange of views, with the understanding that the topic would receive fuller consideration at its forthcoming session. The Commission decided to establish a Working Group of the Whole on the topic for that purpose and appointed Mr. Mathias Forteau, special rapporteur, as Chair of the Working Group. The Commission subsequently took note of the oral report of the Chair of the Working Group. Nevertheless, members engaged in substantive discussion of the issues raised, offering both general assessments and specific observations on the draft conclusions proposed.

B. Consideration of the topic at the seventy-seventh session (2026)

257. At the present session the Commission had before it the third report of the special rapporteur as well as the second report prepared by him the previous year. The Commission considered these reports of the special rapporteur at its 3735th to 3740th and 3742nd meetings, from 6 to 19 May 2026.[161]

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[158] UNGA, 'Report of the International Law Commission on the work of its seventy-sixth session' (28 April- 30 May 2025) UN Doc. A/80/10 (15 August 2025)

[159] UNGA, 'Report of the International Law Commission on the work of its seventy-sixth session' (28 April- 30 May 2025) UN Doc. A/80/10 (15 August 2025)

[160] ILC, 'Second report on non-legally binding international agreement, by Mathias Forteau, special rapporteur' UN Doc. A/CN.4/784 (18 February 2025)

[161] ILC, 'Provisional summary record of the 3735th meeting' (6 May 2026) UN Doc. A/CN.4/SR.3735; ILC, 'Provisional summary record of the 3736th meeting' (7 May 2026) UN Doc. A/CN.4/SR.3736; ILC, 'Provisional summary record of the 3737th meeting' (8 May 2026) UN Doc. A/CN.4/SR.3737; ILC, 'Provisional summary record of the 3738th meeting' (12 May 2026) UN Doc. A/CN.4/SR.3738; ILC, 'Provisional summary record of the 3740th meeting' (14 May 2026) UN Doc. A/CN.4/SR.3740; ILC, 'Provisional summary record of the 3742nd meeting' (19 May 2026) UN Doc. A/CN.4/SR.3742;

258. At its 3742nd meeting, on 19 May 2026, the Commission referred draft conclusions 1 to 6, as contained in the second report of the special rapporteur, to the Drafting Committee, taking into account the views expressed in the debate in the plenary.

259. At its 3749th meeting, on 5 June 2026, the Chair of the Drafting Committee introduced the report of the Committee on the topic. At the same meeting, the Commission provisionally adopted the title of Part One and draft conclusions 1 to 5. Further at its 3780th meeting, on 27 July 2026, the Commission adopted the commentaries to draft conclusions 1 to 5 provisionally adopted at the current session.

The third report of the special rapporteur

260. While the second report of the special rapporteur addressed the general elements of the topic, including purpose, use of terms, scope, and the without-prejudice clause, the third report built upon that approach and provided updates on recent developments. It also continued the enquiry into the possible legal implications of non-legally binding international agreements. However, the third report did not propose any further draft conclusions in addition to those proposed in the second report.

261. The third report followed the preliminary first report of 2024 and the second report of 2025, which had proposed six draft conclusions. Because the Commission's shortened 2025 session had prevented plenary consideration of the second report, the third report updated that work in light of working group deliberations held last year, the statements delivered by States in the Sixth Committee of the UN General Assembly, written submission received from States and recent jurisprudence. The approach followed broadly sought to preserve the flexibility of such agreements while improving legal certainty concerning their identification and possible implications.

262. A major development noted in the third report was the ICJ's 2025 judgment in the *Gabon–Equatorial Guinea* case,[162] in which the Court had held that the Bata Convention was not legally binding. The decisive criterion identified by the Court was whether the parties had intended to be legally bound; without that intention, an instrument could not constitute a treaty. Intention could be expressly stated or inferred from relevant indications, which the Court had organized into three categories: the terms of the instrument, the particular circumstances in which it had been drawn up, and the parties' subsequent conduct. These indications had to be assessed collectively and contextually in each case. Textual features, including obligatory language and provisions on entry into force, could suggest legal bindingness, but none was necessarily conclusive. Consistent subsequent conduct could outweigh contrary textual indications, while registration by the United Nations Secretariat did not itself transform an instrument into a treaty.

263. The report also examined continuing disagreement over terminology. The special rapporteur retained a preference for "non-legally binding international agreement", reasoning that not every international agreement was necessarily a treaty, although several States considered "agreement" inherently legal and favoured "instrument", "understanding", or "arrangement". No consensus had emerged, and each alternative carried difficulties, including excessive breadth or divergent

[162] *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)* (Judgment of 19 May 2025) <www.icj-cij.org/case/179> accessed 1 October 2026

meanings in national practice. The proposed definition therefore referred to a mutual commitment entered into at the international level that neither created rights or obligations nor otherwise had binding legal effect, while preserving the meanings assigned to terminology under domestic law and particular international instruments.

264. The first four draft conclusions addressed purpose, terminology, scope, and domestic rules or practices. The projected conclusions were non-prescriptive: they sought clarification without diminishing the flexibility of these instruments or affecting the binding force and governing regime of treaties. The proposed scope covered written bilateral and multilateral arrangements of an international character between States, between States and international organizations, and among international organizations. The inclusion of agreements made by ministries, administrative bodies, local authorities, and other sub-State entities remained controversial because national rules on competence and representation varied. Authorized State representatives could readily be included, whereas entities lacking such authority required caution. One proposed compromise was to address sub-State authorities only in the commentary. The work would remain without prejudice to applicable national rules and practices.

265. Draft conclusions 5 and 6 concerned identification. The report recognized that the legal character of an instrument had to be assessed individually, with intention as the essential criterion. An express common statement that an instrument was or was not legally binding ordinarily provided powerful evidence, although some delegations considered it decisive and others favoured qualifying its sufficiency. Its absence created no presumption either way. The report noted that, where wording, substance, or subject matter conflicted with an express disclaimer, relevant factors had to be evaluated together. Negotiators were therefore advised to avoid inconsistencies between declared intention and operative language. In the absence of an express indication, relevant factors included the entire text; each participant's drafting practice; form, structure, title, and final clauses on entry into force, amendment, duration, termination, dispute settlement, governing law, registration, finance, or monitoring; subject matter; negotiating and adoption circumstances; authority of the negotiators; signature and domestic approval procedures; subsequent conduct; publication and registration; and, potentially, the conduct of third States. The special rapporteur favoured an indicative list, accompanied by commentary and an express warning that no single indicator was inherently determinative.

266. Regarding the final form of the Commission's work, the report noted that support existed for draft conclusions, draft guidelines, recommendations, or a hybrid product with model clauses or good practices. The special rapporteur continued provisionally to favour draft conclusions, while recognizing that the commentaries had to balance comprehensive documentation with practical accessibility. Some States supported supplementary tools and publication mechanisms; others warned that model formulations could constrain evolving practice.

267. The second part of the report introduced the possible legal implications of non-legally binding international agreements. Its starting point was categorical: such agreements did not, by themselves, create binding rights or obligations; non-compliance was not an internationally wrongful act, did not engage international responsibility, and could not justify countermeasures. Nevertheless, absence of binding force did not necessarily mean absence of all legal relevance. Practice and jurisprudence indicated that non-binding agreements could assist treaty interpretation, including as subsequent agreements; contribute evidence of custom or *opinio juris*; guide implementation of existing obligations; acquire binding significance when incorporated into or

referenced by a treaty; and constitute factual representations relevant to estoppel. They could prepare the ground for later treaties or custom. However, good faith could not independently create an obligation where none otherwise existed, and any legal consequence had to derive from international law rather than from the non-binding agreement alone.

268. The report accordingly recommended a cautious, practice-based road map. It proposed that further work should prioritize the following three questions: the role of non-binding agreements in forming or identifying customary international law and general principles; their interpretative function and their interaction with good faith, cooperation, acquiescence, and estoppel.

269. It assigned lower priority to the settled propositions that such agreements created no obligations, could not permit derogation from existing international obligations or peremptory norms, and could gain binding force through incorporation into binding law.

270. The special rapporteur advised against constructing a parallel treaty regime or prematurely applying treaty rules by analogy. Before proposing further conclusions, the Commission was advised to obtain geographically representative information from States and, if international organizations were included within the project's scope, from those organizations as well. Throughout, intention was to remain central, and the Commission's outcome was intended to enhance clarity without converting politically flexible commitments into legal obligations contrary to their authors' design.

271. The project was ultimately presented as an exercise in clarification rather than codification. It was intended to assist States, international organizations, courts, and practitioners in distinguishing legal obligations from political commitments while respecting the diversity and continuing evolution of international practice.

Deliberations on the topic at the plenary meetings of the Commission

272. The deliberations were based principally on the special rapporteur's second and third reports, which addressed the introductory provisions of the topic, the distinction between treaties and non-legally binding international agreements, and the possible legal implications of non-legally binding international agreements. The deliberations reflected the practical importance of such agreements in contemporary international relations, while also revealing significant differences concerning their terminology, scope, legal characterization and possible effects.

273. In his opening address, the special rapporteur explained that although the Working Group had undertaken preliminary discussions, the draft conclusions contained in the second report had not been debated in plenary or referred to the Drafting Committee. The third report had therefore been prepared both to update the analysis and to reflect the views expressed by members of the Commission, States in the Sixth Committee and States that had submitted written observations. The third report also introduced the question of the possible legal implications of non-legally binding international agreements, without yet proposing draft conclusions on that aspect.

274. Among the members of the Commission a broad measure of convergence appeared to have emerged around the central proposition that the distinction between a treaty and a non-legally binding international agreement depended primarily on the intention of the parties regarding their legal obligations under international law. However, the deliberations showed that agreement on this general proposition did not eliminate difficult questions concerning the interpretation of

intention, the relevance of subsequent conduct, the role of domestic and institutional rules, and the possibility that non-legally binding agreements might nevertheless have legal implications.

275. The special rapporteur expressed his preference that the Commission's work should continue in the form of draft conclusions. Several members supported that approach, considering draft conclusions capable of providing authoritative guidance to States, international organizations and other practitioners. It was emphasized that the topic had a strongly practical dimension as it was well known that Governments and international organizations frequently used memorandums of understanding and other non-treaty arrangements, often in areas requiring flexibility, speed and political discretion. The draft conclusions were said to be particularly use for smaller international organizations and sub-State entities because they might not possess specialized legal advisers.

276. Other members considered that draft guidelines might be more suitable. It was argued that the principal value of the Commission's work would lie in helping States and international organizations to draft non-legally binding agreements in a manner that avoided later disputes. On that view, guidelines would provide prospective assistance, whereas draft conclusions might be more naturally suited to the retrospective assessment of whether an instrument was legally binding.

277. The discussion also raised the question whether the draft conclusions should be self-contained. Some members supported including important qualifications directly in the text so that practitioners would not be required to consult lengthy commentaries. Others considered that provisions concerning the non-prescriptive character of the work, the preservation of flexibility and the relationship with domestic law were better placed in the commentary or, possibly, in a preamble. The concern was that excessive detail in the operative text could make the draft conclusions cumbersome and might unintentionally suggest that the Commission was attempting to regulate a field that States had deliberately kept flexible.

278. Terminology was one of the most extensively debated issues. The special rapporteur continued to favour the expression "non-legally binding international agreements". He considered "agreement" technically appropriate because it conveyed a convergence of wills or a mutual understanding, without necessarily determining whether the resulting arrangement was legally binding. Some members agreed that "agreement" was broader than "treaty": every treaty was an international agreement, but not every agreement was a treaty.

279. Other members preferred "instrument", "arrangement" or "legally non-binding agreement". The principal objection to "agreement" was that, in the practice of many States, the term often suggested an intention to create legal obligations. It was argued that "instrument" was more neutral and could encompass texts described by different names, including memorandums of understanding. The term "arrangement" was also considered useful because it avoided the implication that the participants had entered into a legally cognizable agreement. A further view was that "legally non-binding" was preferable to "non-legally binding", since the latter might suggest that the arrangement was binding in some other sense.

280. The choice of terminology was connected to the definition proposed in draft conclusion 2. The proposed definition referred to a "mutual commitment" adopted at the international level that did not create rights or obligations and had no binding legal effect. Some members considered that "mutual commitment" might be too restrictive. It could imply reciprocity or equivalence between the commitments of the participants, whereas some non-legally binding arrangements might

deliberately impose responsibilities primarily, or even exclusively, on one participant. Concerns were also expressed about the application of the concept of mutuality in multilateral arrangements.

281. Several members suggested that the definition should expressly state that the arrangements were not governed by international law, drawing an analogy with article 2(1)(a) of the Vienna Convention on the Law of Treaties. Others preferred to retain wording that focused on the absence of binding legal effects, in order to avoid suggesting that non-legally binding agreements were wholly irrelevant to international law.

282. The proposed scope covered written bilateral and multilateral agreements of an international nature concluded between States, between States and international organizations, or between international organizations. The inclusion of international organizations attracted substantial support. Members pointed to the extensive use of non-legally binding arrangements by regional and specialized organizations, including organizations with international legal personality.

283. The inclusion of agreements involving sub-State authorities was more controversial. Supporters considered that such agreements were common in practice and could raise significant questions concerning authorization, attribution and domestic competence. Others feared that their inclusion would extend the topic into the complex law of State responsibility and international legal personality. It was suggested that the matter might be addressed in the commentary rather than in the operative text, or that the expression "sub-State authorities" should be more clearly defined.

284. The central issue concerned the method for determining whether an international text was legally binding. The special rapporteur proposed that the intention of the participants should be assessed on a case-by-case basis. That intention could be expressed directly or inferred from other elements, which had to be examined as a whole. Draft conclusion 6 addressed the situation in which the text expressly stated that the arrangement was or was not intended to be legally binding.

285. The members broadly supported the primacy of intention relying upon the ICJ's recent judgment of 19 May 2025 in *Gabon-Equatorial Guinea* case. The judgment had confirmed that the use of the word "agreement" did not, by itself, establish an intention to be legally bound. Rather, the decisive inquiry concerned whether the participants intended the instrument to produce legal effects under international law.

286. There was, however, considerable discussion about how an express statement of intention should operate. Some members considered that an express clause stating that an instrument was non-legally binding should ordinarily be sufficient and should not be displaced by other indicators. They opposed the insertion of the qualification "generally", fearing that it would undermine the certainty that such clauses were designed to provide. Others considered that an express statement should create a strong presumption but should not be treated as conclusive where the remainder of the instrument, or the circumstances surrounding its adoption, pointed decisively in the opposite direction.

287. The Commission also deliberated on the indicators that might be used where no express statement existed. These included the language and structure of the instrument, its subject matter, the circumstances in which it had been drawn up, the authority of the persons involved, the

terminology used, the existence of provisions concerning amendment or termination, and the subsequent conduct of the participants.

288. The special rapporteur considered whether the indicators should be organized into three broad categories identified by the ICJ: the terms of the instrument, the particular circumstances in which it was drawn up, and the subsequent conduct of the participants. Some members welcomed that structure because it would provide a practical and accessible framework. Others preferred an indicative, non-exhaustive list without a rigid classification. They feared that the three categories might obscure the specific relevance of individual indicators or encourage an inappropriate analogy with the rules of treaty interpretation under the Vienna Convention.

289. Subsequent conduct was particularly contentious. Some members considered that it could help confirm the intention of the participants, especially where the text was ambiguous. Others cautioned that subsequent conduct could not transform a non-legally binding arrangement into a treaty. It might demonstrate that the participants had later assumed independent legal obligations, but it should not alter the original character of the instrument. The relevance of registration with the United Nations was also considered. Registration was not regarded as conferring legal status on an instrument, although, in particular circumstances, the conduct surrounding registration might constitute evidence of the participants' intention.

290. The most exploratory part of the deliberations concerned the possible legal implications of non-legally binding international agreements. The members generally agreed that the absence of binding force did not necessarily mean the absence of all legal significance. At the same time, they emphasized that the Commission should proceed cautiously so as not to undermine the essential flexibility of these arrangements.

291. Several possible implications were identified. Non-legally binding agreements might assist in the interpretation of treaties, provide evidence of subsequent practice, contribute to the identification or development of customary international law, or assist in the formulation of general principles of law. They might also reflect or reaffirm existing legal obligations without themselves creating new obligations. In that context, the substantive language of an arrangement would not necessarily determine its legal character. A text could reproduce existing obligations under the Charter of the United Nations or other rules without becoming a treaty.

292. The members repeatedly stressed that non-compliance with a non-legally binding agreement did not, solely by reason of that non-compliance, constitute an internationally wrongful act. It could not ordinarily justify countermeasures. Nor, according to several interventions, could a failure to comply automatically amount to a breach of good faith or establish estoppel. Some members nevertheless considered that good faith might remain relevant as a general principle governing the conduct of States, provided that it was not used to convert the arrangement into a legally binding instrument.

293. The possible relevance of peremptory norms was also noted. Members considered that the non-binding character of an agreement could not authorize conduct contrary to jus cogens. That proposition did not mean that the Vienna Convention on the Law of Treaties applied to non-legally binding agreements; rather, it reflected the independent and overriding character of peremptory norms.

294. The Commission remained divided on whether concepts such as estoppel, legitimate expectations, acquiescence, abuse of rights and abuse of process should be examined. Some members regarded those doctrines as practically important, particularly where participants had relied on representations made in a non-binding arrangement. Others warned that their inclusion could generate uncertainty and blur the distinction between political commitments and legal obligations.

C. Text of the draft conclusions on non-legally binding international agreements provisionally adopted thus far by the Commission

Part One

Introduction

Conclusion 1

Scope and purpose

1. The present draft conclusions concern non-legally binding international agreements.

2. The purpose of the present draft conclusions is to provide elements of clarification in relation to non-legally binding international agreements.

Conclusion 2

Rules or procedures followed by States and international organizations

The present draft conclusions do not affect rules or procedures followed by States and international organizations in relation to the drafting and adoption of non-legally binding international agreements.

Conclusion 3

Use of terms

1. For the purposes of the present draft conclusions, the term "non-legally binding international agreement" is used to refer to any agreement made in writing between States, between States and international organizations, or between international organizations, whether bilateral or multilateral, which, as such, does not create any rights or obligations, or have other binding legal effects, under international law.

2. The term "non-legally binding international agreement" under paragraph 1 includes, in relation to States, agreements entered into by organs of the government, territorial units and agencies or instrumentalities of the State which may enter into such agreements.

3. The use of the term "agreement" in the present draft conclusions does not affect:

(*a*) the meaning which may be given to this term in the internal law or the practice of a State or in the rules or the practice of an international organization;

(b) the meaning given to this term in any international instrument.

Part Two

…

Conclusion 4

Assessment of whether an international agreement is legally binding or not

1. Whether an international agreement is legally binding or not depends on the intention of the participants thereto. In the absence of an intention of the participants to be legally bound by the agreement, it is not legally binding.

2. The intention of the participants in the agreement to be or not to be legally bound may be expressly stated.

3. In the absence of such an express indication, the intention of the participants in the agreement to be or not to be legally bound can be established by recourse to the relevant elements identified in draft conclusions [… to …].b These elements are assessed as a whole.

4. Whether an international agreement is legally binding or not is assessed on a case-by-case basis.

Conclusion 5

Express indication of intention

The fact that an international agreement expressly indicates that it is not legally binding under international law is normally sufficient to identify the intention of the participants thereto.

D. Present status and future work

295. The Commission was able to make considerable progress on the topic, completing its consideration of two reports prepared by the special rapporteur and detailed consideration of the 6 draft conclusions proposed. Taking into account the views expressed by the members of the Commission in the plenary, the Drafting Committee adopted the draft conclusions 1-5 after making necessary changes. The Commission preliminary adopted draft conclusions 1-5 and their commentaries at the session, which were open comments from States.

296. The deliberations therefore left the Commission with a measure of agreement on the basic distinction between treaties and non-legally binding international agreements, but not yet on the precise formulation of that distinction or on the consequences that might follow from it. The prevailing view was that the topic had significant practical value, particularly for drafting and institutional practice. The principal challenge had been to provide useful legal guidance without prescribing a rigid model, weakening the flexibility of non-binding cooperation or inadvertently treating political commitments as treaties. The Commission's subsequent work was expected to concentrate on reconciling those objectives through carefully framed, non-exhaustive guidance grounded in State practice, international jurisprudence and the distinctive purposes served by non-legally binding international agreements.

E. Comments and observations of the AALCO Secretariat

297. The AALCO Secretariat welcomes the progress achieved by the Commission on the topic "Non-legally binding international agreements" and considers the project timely in view of the increasing reliance of States and international organizations on flexible instruments of international cooperation.

298. The Secretariat considers it expedient that the conclusions retain an expressly non-prescriptive orientation. As expressed by members and States the purpose should be to clarify existing practice and provide practical guidance, without establishing new legal rules or restricting the flexibility that makes such instruments useful. This approach is consistent with the Commission's formulation that the draft conclusions provide "elements of clarification" and with the views previously expressed at previous Annual Session of AALCO. Further, the distinction between treaties and non-legally binding international agreements should be maintained not only in terminology but also their interpretation and legal consequences, to avoid conflating the law of treaties with codification or clarification efforts on non-legally binding international agreements.

299. The Secretariat also emphasizes that the Commission's conclusions must be founded upon geographically representative practice. Greater attention should be accorded to the constitutional frameworks, administrative practices and cooperative experience of Asian and African States either bilaterally or through regional forums and organizations. Such representation is necessary to ensure that the final outcome reflects the diversity of legal systems and does not elevate the practice of a limited group of States into generally applicable guidance.

300. At a recent webinar on the topic, addressed some critical issues regarding the legal implication of non-legally binding international agreements including the use of non-binding agreements for interpretative purposes their potential role in the formation of some sources of international law and the possible application of the principle of good faith or the doctrine of estoppel. Further it was also highlighted that the work of the Commission would be useful for Asian and African States as could serve as the basis for development of a practical manual, model clauses, or drafting guidelines under the auspices of the UN Treaty Section.

301. The Secretariat invites AALCO Member States to consider the draft conclusions and their interpretation aided by the commentaries and express their views regarding their scope and implementation within their respective practice of using non-legally binding international agreements to regulate a number of areas of international relations.

IX. COMPENSATION FOR DAMAGES CAUSED BY INTERNATIONALLY WRONGFUL ACTS

A. Background

302. During seminar on the fiftieth anniversary of the Commission the topic of compensation was first suggested for consideration in the Working Group on the long-term programme of work.[163] Later in 2016, the Secretariat included the topic "Compensation under international law" in the list of potential topics for consideration.[164] In addition, the President of the ICJ, Judge Ronny Abraham stated in response to a question regarding possible topics for consideration by the Commission that a study by the Commission on the topic of compensation under international law would be useful.[165]

303. In 2023, a proposal building on the working paper on possible topics was submitted to the Working Group on the long-term programme of work resulting in its inclusion in the long-term progrramme of work of the Commission the following year.[166] Thereafter a syllabus[167] for the topic was prepared by Mr. Mārtiņš Paparinskis and annexed to the report of the seventy-fifth session of the Commission in 2024 which was taken note of the General Assembly.[168]

304. At its previous seventy-sixth session held 2025, the Commission decided to include the topic "Compensation for the damage caused by internationally wrongful acts" in its programme of work[169] and appointed Mr. Mārtiņš Paparinskis as special rapporteur[170] which was noted by the General Assembly at its eightieth session.[171]

305. At the Sixth Committee of the General Assembly at its eightieth session a number of State made observations regarding the inclusion of the topic including 48 States of which 33 welcomed its inclusion, 10 took note of the decision while 2 were critical of the inclusion of the topic.[172]

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[163] ILC, 'Long-term programme of work Review of the list of topics established in 1996 in the light of subsequent developments Working paper prepared by the Secretariat' UN Doc. A/CN.4/679, para. 47 (5 March 2015)
[164] ILC, 'Long-term programme of work Review of the list of topics established in 1996 in the light of subsequent developments Working paper prepared by the Secretariat' UN Doc. A/CN.4/679, Section E UN Doc. A/CN.4/679/Add.1 (31 March 2016)
[165] ILC, 'Provisional summary record of the 3317th meeting' UN Doc. A/CN.4/SR. 3317 (11August 2016) para. 19
[166] ILC, 'Report of the work of the International Law Commission at its seventy-fifth session (29 April-31 May and 1 July-2 August 2024)' UN Doc. A/79/10 (10 September 2024) para. 423
[167] Ibid, annex I;
[168] UNGA, 'Report of the International Law Commission on the work of its seventy-fifth session' UN Doc. A/RES/79/121 (4 December 2024) para. 8.
[169] [169] ILC, 'Report of the work of the International Law Commission at its seventy-sixth session (28 April-30 May 2025)' UN Doc. A/80/10 (15 August 2025)
[170] See ILC, "Provisional summary report of the 3728th meeting" UN Doc. A/CN.4/ SR. 3728 (8 October 2025)
[171] UNGA, 'Report of the International Law Commission on the work of its seventy-sixth session' UN Doc. A/RES/80/164 (19 December 2025).
[172] ILC, 'First report on compensation for the damage caused by internationally wrongful acts, by Mārtiņš Paparinskis, special rapporteur' UN Doc. A/CN.4/793 (10 March 2026)

B. Consideration of the topic at the seventy-seventh session (2026)

306. At the present seventy-seventh session of the Commission, it had before it the first report on the topic prepared by the special rapporteur that builds on the syllabus and is preliminary and exploratory in nature.

307. At its 3756th to 3761st meetings, from 7 to 14 July 2026,[173] the Commission considered the first report of the special rapporteur. Further at its 3782nd meeting, on 29 July 2026, the Commission decided to request the Secretariat to prepare a memorandum for its seventy-ninth session providing information on whether, or to what extent, consideration is given to the financial capacity of the responsible State to pay compensation, based on a survey of the case law of international courts and tribunals and other international bodies and treaties contained in the United Nations Treaty Series and in the League of Nations Treaty Series, which may be of relevance to its future work on the topic "Compensation for the damage caused by internationally wrongful acts".

308. At the same meeting, the Commission approved the special rapporteur's recommendation that the Secretariat contact States and relevant international bodies in order to obtain information and their views relevant to the topic. It was also decided that a questionnaire concerning issues specifically relevant to the topic would be communicated to States.[174]

The first report of the special rapporteur

309. The first report sets out in general terms the methodological approach to the topic, its scope and the key issues that will be tackled. In addition, the report also considers the previous work of the Commission relating to the topic, and observations in the Sixth Committee of the General Assembly.

310. As discussed, the report is preliminary and exploratory and does not propose draft articles or other provisions, but establishes the methodological framework, scope, principal questions and possible form of the International Law Commission's future work. The report situates the topic within the Commission's earlier work on the State responsibility, particularly article 36 of the Articles on responsibility of States for internationally wrongful acts,[175] while emphasizing that the subject now requires a more detailed and contemporary treatment light substantial developments in law and practice.

311. The report notes that compensation has a long-established place in public international law. Its classical formulation appears in the *Factory at Chorzów* judgment[176] of the Permanent Court

[173] ILC, 'Provisions summary record of the 3756th meeting of the International Law Commission' (7 July 2026) UN Doc. A/CN.4/SR.3756; ILC, 'Provisions summary record of the 3757th meeting of the International Law Commission' (8 July 2026) UN Doc. A/CN.4/SR.3757; ILC, 'Provisions summary record of the 3758th meeting of the International Law Commission' (9 July 2026) UN Doc. A/CN.4/SR.3758; ILC, 'Provisions summary record of the 3759th meeting of the International Law Commission' (9 July 2026) UN Doc. A/CN.4/SR.3759; ILC, 'Provisions summary record of the 3760th meeting of the International Law Commission' (13 July 2026) UN Doc. A/CN.4/SR.3760; ILC, 'Provisions summary record of the 3761st meeting of the International Law Commission' (14 July 2026) UN Doc. A/CN.4/SR.3761

[174] ILC Report, 2026,

[175] UNGA Res 56/83 (28 January 2002) 'Responsibility of States for internationally wrongful acts' (ARSIWA) annex

[176] *Factory at Chorzów*, Judgment No. 13 (Claim for Indemnity) (Merits), (1928) P.C.I.J., Series A, No. 17, 47.

of International Justice, which articulated the principle that reparation should, as far as possible, eliminate the consequences of the wrongful act and restore the position that would probably have existed had the act not been committed. The Commission subsequently addressed compensation principally through article 36 of the articles on State responsibility. That provision requires the responsible State to compensate for damage caused by the internationally wrongful act insofar as such damage is not made good by restitution. It further provides that compensation covers financially assessable damage, including loss of profits where appropriate. The report notes that international courts and tribunals have generally recognized article 36 as reflecting customary international law. The report also considers in detail the prior codification work on the topic by bodies other than the Commission including the Institute of International Law, the Conference for the Codification of International Law of the League of Nations (Hague Conference) and the Harvard Law School.

312. Addressing the reactions of States in the Sixth Committee the report notes that they were predominantly favourable. It states that in 2024, most delegations welcomed the inclusion of the topic in the long-term programme, while a smaller number merely took note of it or expressed reservations. In 2025, the appointment of the special rapporteur and the formal inclusion of the topic in the programme of work likewise received broad support. Several States emphasized the practical importance of compensation and the value of developing the law on the basis of the Commission's earlier work. Delegations generally agreed that article 36 should provide the principal starting point and that the topic should remain firmly connected to the articles on State responsibility.

313. At the same time, the report also noted that States stressed the need for methodological caution. Some advocated a primarily approach grounded in established State practice, while others accepted that the project might also contribute to the progressive development of international law. Delegations cautioned against excessive reliance on judicial decisions that were inadequately reasoned or insufficiently supported by State practice and opinio juris. They encouraged the Commission to consult a broad range of materials, reflect diverse legal traditions and avoid privileging any particular regional or doctrinal perspective. A few States questioned whether the project would produce tangible practical results. The special rapporteur responds by proposing a detailed, evidence-based study intended to complement, rather than revise or replace, the existing legal framework.

314. The report proposes a broad but carefully defined scope. It would address compensation arising from internationally wrongful acts, while remaining attentive to the distinction between secondary rules of responsibility and the primary rules whose breach gives rise to responsibility. The special rapporteur intends to examine questions of causation, the types of damage that may be compensable, valuation methods, proof, mitigation, contributory conduct, loss of profits, moral damage, interest and the relationship between compensation and other forms of reparation, especially restitution and satisfaction. The report also identifies the possible relevance of circumstances precluding wrongfulness, including the question whether an obligation to provide compensation may nevertheless arise in certain situations.

315. The proposed study would also consider the personal scope of entitlement. Although the articles on State responsibility primarily address the consequences of responsibility in relations

between States, contemporary practice increasingly involves individuals, corporations, communities and other entities. Human rights bodies, investment tribunals and claims commissions have developed significant practice concerning direct or indirect rights to compensation. The special rapporteur therefore proposes to assess whether, and in what circumstances, international law recognizes an enforceable right to compensation in favour of persons other than States or international organizations.

316. The report clearly identifies the questions to examine in its study on the topic. The special rapporteur identifies seven questions to guide the study of compensation for damage caused by internationally wrongful acts. The first concerns the general framing of the law of compensation, including its relationship with the broader principle of full reparation, the distinction between general secondary rules and particular primary obligations, and the possible application of those rules to States, international organizations and non-State claimants. The second addresses the conditions in which compensation is applicable, particularly its relationship with restitution and satisfaction. Compensation is not necessarily the primary or exclusive form of reparation; it is payable insofar as the relevant damage has not been remedied through restitution.

317. The third question concerns the identification and clarification of the substantive rules governing compensation. It includes causation, the meaning of damage, material and moral injury, mitigation, contribution to the injury, concurrent causes and the prohibition of punitive damages. Particular attention may be given to environmental, humanitarian, human-rights and climate-related damage, as well as to situations involving multiple wrongful acts or responsible actors. The fourth question relates to the practical determination of quantum. It would examine applicable valuation standards and methods, including fair-market value, discounted cash-flow analysis, loss of opportunity, environmental goods and services, equitable assessment, global sums, evidentiary requirements and the use of experts.

318. The fifth question concerns loss of profits. The study would assess when such losses are sufficiently established to warrant compensation, how speculative claims should be treated, and how double recovery may be avoided where future profits have already been reflected in the valuation of income-producing assets. The sixth question addresses interest, including its function in securing full reparation, the appropriate starting and ending dates, the choice between simple and compound interest, and the selection of an appropriate rate. The special rapporteur emphasizes that the practice of investment tribunals concerning compound interest must not be accepted uncritically.

319. The seventh question concerns whether the financial condition of the responsible State may justify limiting compensation, particularly where an award would impose a crippling burden. The report also connects this issue with the possible role of equity and general principles of law in identifying or applying compensation rules. The study will therefore consider whether such considerations may support a fair and workable award without weakening the obligation of full reparation or converting compensation into a punitive measure.

320. After a thorough study of the judicial decisions State practice from a number of international courts and tribunals particularly the ICJ, the International Tribunal for the Law of the Sea (ITLOS) and the Iran US Claims Tribunal, the report concludes that contemporary developments justify renewed consideration of compensation. Its practical value would lie in clarifying the operation of the general principle of full reparation while preserving the flexibility necessary for varied factual

and legal contexts. The further report also notes that particular attention is warrant for claims commissions, environmental and climate-related damage, historical injuries, investment disputes, human rights violations and emerging mechanisms such as registers of damage and compensation funds. The special rapporteur in conclusion seeks the Commission's views on the topic's scope, the questions to be studied, the relevant judicial and State practice, the possible final form of the work and its organization and timetable.

The deliberations on the topic at the plenary meetings of the Commission

321. The special rapporteur presented the topic as an effort to clarify the secondary rules governing compensation while preserving the conceptual structure already established by the Commission. He stressed that the work would neither replace nor reopen the Articles on State responsibility but would examine how the general rules on compensation had operated in contemporary judicial, arbitral, institutional and State practice.

322. The special rapporteur explained that the study would be based on developments since the adoption of the Articles on State responsibility in 2001. It would draw upon decisions of the International Court of Justice, the International Tribunal for the Law of the Sea, human rights courts, investor-State tribunals and claims commissions, as well as treaties, pleadings, national judicial decisions, negotiated settlements and other forms of State practice. The scope of the topic was intended to encompass compensation owed in inter-State relations and, where the applicable legal regime recognized such a right, compensation payable to individuals or other entities. The special rapporteur also proposed examining compensation obligations of international organizations, while excluding reparations ordered by international criminal courts against convicted persons.

323. The topic was to remain focused principally on secondary rules arising from internationally wrongful acts. The special rapporteur identified article 36 as the central provision, while recognizing that other provisions, including those concerning injury, causation, interest and contribution to the injury, would necessarily be relevant. He emphasized that compensation was only one form of reparation and should not be treated as synonymous with full reparation. Restitution, satisfaction and other remedial measures would therefore remain conceptually distinct, although they might have to be considered in order to define the content and limits of compensation.

324. Members broadly welcomed the topic and regarded it as timely, practically important and closely connected with peaceful dispute settlement, fairness and distributive justice. The first report was generally regarded as a substantial and useful foundation. Members supported building on article 36, provided that the new work supplemented rather than altered the existing law. They also emphasized the need to maintain coherence with the Commission's work on international organizations, diplomatic protection, peremptory norms, succession of States, environmental protection and the settlement of disputes involving international organizations.

325. Considerable discussion concerned the distinction between primary and secondary rules. Several members supported limiting the topic to secondary rules governing the consequences of internationally wrongful conduct. Others warned that the distinction could become artificial in situations involving mixed lawful and wrongful conduct, climate-related damage, environmental harm, colonial reparations, countermeasures or specialized treaty regimes. The view was expressed

that primary rules might themselves contain specific remedial requirements or operate as *lex specialis*. Accordingly, the Commission was urged to examine compensation through systemic integration and to consider whether the character of the obligation breached affected the applicable approach to compensation.

326. Members also debated the possible inclusion of compensation under article 27(b) of the Articles on State responsibility, concerning material loss caused by conduct undertaken in circumstances precluding wrongfulness. Some members supported examining that issue, particularly because it could arise in investment arbitration and other specialized contexts. Others considered that compensation in such circumstances belonged to a different legal framework and that existing practice was too limited to justify treating it as part of the core topic. A possible compromise was to consider it incidentally while defining the scope of the subject.

327. The role of historical injustice attracted substantial attention. Some members supported examining colonialism, slavery, forced labour and other forms of structural or intergenerational harm. They maintained that contemporary reparatory practices and acknowledgements by States could illuminate the legal consequences of historical wrongs. Other members cautioned that such questions involved primary rules, intertemporal law and broader political and historical considerations extending beyond compensation. The emerging view was that historical injustices could be considered where an obligation to compensate had been recognized or assumed, while difficulties relating to proof, valuation, community injury and intergenerational harm would require careful treatment.

328. There was also support for examining compensation claims involving individuals and entities other than States. Members noted that human rights and investment law had increasingly recognized claims by private actors and had developed remedial structures directed towards victims. At the same time, several members cautioned against assuming that rules developed in inter-State disputes automatically applied to other relationships. The entitlement of individuals or other entities to compensation was said to depend primarily on the applicable primary obligation and the remedial structure of the relevant regime. The Commission was therefore encouraged to focus on the assessment and determination of compensation where such an entitlement had already been recognized, rather than deciding abstractly whether international law generally conferred such a right.

329. The members identified causation and damage as central substantive questions. They considered that the requirement of a sufficiently direct and certain causal connection had been applied inconsistently and had left substantial discretion to courts and tribunals. Further examination was therefore proposed regarding directness, foreseeability, proximity, intervening causes and standards of proof. Particular difficulties were noted in cases involving climate change, environmental degradation, multiple causes and several responsible actors. Moral and non-material injury was not to be treated as residual, and pure environmental damage and macroeconomic harm were identified as areas requiring further study.

330. The determination of quantum was regarded as one of the most valuable practical contributions that the Commission could make. Members observed that compensation frequently involved approximation rather than mathematical precision. They supported examining valuation techniques, lump-sum awards, loss of profits, evidentiary requirements and expert assessment, while warning that methodologies developed in investment arbitration should not automatically be

elevated into general international law. Interest was treated as an accessory element of compensation, although members differed over whether it should be automatic and whether compound interest could be regarded as a general rule.

331. Members further discussed whether the financial position of the responsible State should influence the amount of compensation. Some considered that exceptionally large awards could have a crippling effect on a State's economy or population and that payment arrangements, instalments or compensation funds might sometimes be necessary. Others insisted that financial hardship could not justify departing from full reparation without convincing evidence of consistent State practice and *opinio juris*. It was emphasized that a large award should not be characterized as punitive merely because it was financially burdensome if it genuinely reflected the injury sustained.

332. The possible role of equity and general principles of law was also considered. Members agreed that general principles had to be identified through a transparent and genuinely comparative analysis reflecting different legal traditions. Equity could assist where precise quantification was impossible, including in cases of non-material injury, community harm, macroeconomic loss and lump-sum settlements. It was nevertheless stressed that equity had to operate *infra legem* and could not displace applicable legal rules.

333. The Commission recognized that judicial decisions were important but should not be treated as the sole or necessarily decisive source of law. Practice had to be assessed in its legal, institutional and remedial context. Investment arbitration, human rights adjudication, claims commissions, United Nations compensation mechanisms, negotiated settlements and voluntary or ex gratia payments could all provide useful evidence, but their specialized character and differing legal bases required caution. Non-judicial practice was considered particularly relevant to issues of proof, causation, valuation, mass claims and the practical administration of compensation.

334. Finally, members expressed differing views concerning the form of the Commission's eventual output. Some supported draft articles, on the ground that the topic was closely linked to the articles on State responsibility and involved codification of existing law. Others preferred draft principles, guidelines or a practical handbook, arguing that compensation practice was diverse, technical and context-sensitive. A hybrid outcome was also proposed, combining binding or rule-like formulations where practice was sufficiently settled with less prescriptive guidance on evidence, valuation, expert testimony and payment modalities. The Commission considered it premature to decide the final form and agreed that the choice should depend on the substance of the rules ultimately identified.

335. In his concluding observations, the special rapporteur acknowledged the need for a broad, evidence-based and cautious examination of State practice. He indicated that future work would consider the relationship between primary rules and *lex specialis*, the possible relevance of article 27(b), historical injustices, international organizations, moral damages, loss of profits, interest, financial hardship, equity and the evidentiary basis for assessing compensation. In closing he stated that he had proposed a questionnaire to States and noted he had noted suggestions regarding a request for a memorandum by the Secretariat and would discuss its scope and timeline with the Secretariat.

C. Present status and future work

336. Regarding the form of the work of the Commission, the special rapporteur suggested in the report that draft articles would be most suitable as a final work product, in line with the approach of the Commission of following its previous work on State responsibility and diplomatic protection. Further the report also suggested that principles could also be another form of the work of the Commission particularly in light of the moist recent consideration of the topics on the principles on the protection of the environment in armed conflict.

337. Regarding the future work on the topic the report contained a time-line that aimed to complete the work of the Commission on second reading in 2032. The special rapporteur proposed that for the seventy-ninth session (2028), the report could address the identification of the rules of international law of compensation (damage, causality, mitigation, concurrency, interest and contribution) and propose relevant draft provisions. For the eightieth session (2029) and eighty-first session (2030), the reports could address the application of the rules of the international law of compensation, including valuation, loss of profits and interest, good practice of application in specialist fields and the question of excessive compensation, propose relevant draft provisions and make the adjustments necessary to provide a full draft for first reading.

338. Several members endorsed the proposed timeline in the first report as a helpful starting point, but insisted it remain provisional and flexible. They recommended that the Commission adjust its work plan once the topic's scope is further clarified and after receiving comments from States in the Sixth Committee.

339. Some members proposed that the special rapporteur prepare a questionnaire to States, complemented by a Secretariat memorandum on compensation. These tools were seen as particularly useful for interpreting and further developing article 36 of the Articles on State responsibility. It was also suggested that the questionnaire could extend beyond States to international organizations and other relevant institutions, thereby broadening the base of practice collected.

D. Comments and observations of the AALCO Secretariat

340. The Commission's consideration of "Compensation for the damage caused by internationally wrongful acts" is timely and practically important, particularly because article 36 of the Articles on Responsibility of States for Internationally Wrongful Acts only recalls the cardinal obligation to compensate but provides limited guidance on causation, valuation and the determination of quantum, leaving the gap to be filled by future practice. The Commission's work should therefore elaborate upon, rather than reopen or modify, the established framework of State responsibility, while preserving the principle of full reparation and the relationship between compensation and other remedies in international law.

341. From the perspective of Asian and African States, the study must rest upon geographically representative State practice drawn from diverse legal traditions, regions and languages. Judicial and arbitral decisions should not be accorded disproportionate weight merely because they are readily accessible and popular in doctrinal work. Particular caution is necessary when relying upon investor–State arbitration, whose valuation methodologies arise from specialized treaty regimes

and private law considerations and should not automatically be treated as rules of general international law.

342. The Commission should give sustained attention to injuries of particular concern to Asian and African States, including environmental degradation, unlawful exploitation of natural resources, armed conflict, occupation, displacement, gross human-rights violations and mass or community harm. Contemporary practice concerning reparations for colonialism, slavery, forced labour and other historical injustices should also be carefully examined, without prejudging difficult questions concerning inter-temporality or the existence of the underlying primary obligation. Where causation or precise quantification is inherently difficult, especially in cases of environmental, macroeconomic, non-material or intergenerational harm, evidentiary standards should remain realistic. Reasonable inferences, approximation, lump-sum assessment and equitable considerations may be appropriate, provided that equity operates within the law and does not substitute for it.

343. Finally, the focus on the responsible State's financial capacity and genuinely crippling consequences may appropriately addressed through equitable payment modalities, instalments, negotiated settlements or compensation funds and other methods so as to preserve concerns for sovereignty and vital interests of States.

344. The AALCO Secretariat invites Member States to consider expressing their views on the scope of the topic and its future direction with a view to guide the Commission in ensuring a universal and equitable effort at codification and progressive on this topic of acute contemporary relevance.

X. DUE DILIGENCE IN INTERNATIONAL LAW

A. Background

345. At its seventy-fifth session (2024), the International Law Commission included the topic "Due diligence in international law" in its long-term programme of work. A syllabus on the topic was annexed to the report of the Commission on the work of its seventy-fifth session. The General Assembly, by resolution 79/121 of 12 December 2024, took note of the inclusion of the topic in the long-term programme of work of the Commission.

346. At its seventy-sixth session (2025), the Commission decided to include the topic in its programme of work and appointed Ms. Penelope Ridings as Special rapporteur. The General Assembly, by resolution 80/164 of 15 December 2025, subsequently took note of the Commission's decision.[177]

347. The topic is intended to examine the legal character, scope and content of due diligence in international law, with particular attention to the obligations of States. The special rapporteur's first report emphasized that the expression "due diligence" is used in different contexts and may carry different meanings. Accordingly, the report distinguished due diligence in international law from concepts of due diligence found in domestic law, business practice and other regulatory contexts.[178]

B. Consideration of the topic at the seventy-seventh session (2026)

First Report of the special rapporteur on the Topic

348. At its seventy-seventh session (2026), the Commission had before it the First Report on Due Diligence in International Law submitted by the special rapporteur, Ms. Penelope Ridings.[3] The report was expressly described as preliminary in nature and was intended primarily to lay the foundation for the Commission's future consideration of the topic, rather than to propose draft texts at this stage. The special rapporteur undertook a mapping exercise of available materials, relying principally upon State practice and *opinio juris*, together with the jurisprudence of international, regional and national courts and tribunals.

349. The Report is divided into seven chapters. Chapter I introduces the topic, its inclusion in the ILC's programme of work, the methodology adopted and terminological issues. Chapter II reviews States' views expressed in the Sixth Committee in 2024 and 2025. Chapter III examines the ILC's previous work and that of other international legal bodies relating to due diligence. Chapter IV provides a historical and thematic overview of available material from the late nineteenth century to the present, including State practice and international jurisprudence. Chapter V identifies the principal issues for further examination, including the scope, legal character, content and variability of due diligence. Chapter VI considers the possible form of the final outcome, with draft principles proposed as a possible approach. Chapter VII outlines the proposed future programme

[177] International Law Commission, 'Report of the International Law Commission on the work of its seventy-sixth session' (2025), UN Doc A/80/10, para 437; UNGA Res 80/164 (15 December 2025) <https://docs.un.org/en/A/80/10> accessed 26 September 2026.

[178] ILC, 'First report on due diligence in international law by Penelope Ridings, special rapporteur' (4 March 2026) UN Doc. UN Doc A/CN.4/792 <https://docs.un.org/en/A/CN.4/792> accessed 26 September 2026.

of work, including further reports on the circumstances giving rise to due diligence obligations, the applicable standard of conduct and its relationship with State responsibility.

350. The special rapporteur observes that the preliminary survey disclosed a number of areas of convergence concerning due diligence. These included its relevance to transboundary environmental harm, international human rights law and international humanitarian law; its application to both acts and omissions; and its role in risk management, particularly in circumstances involving potentially harmful conduct by non-State actors. There was also convergence concerning certain procedural requirements associated with due diligence, including the adoption of legislative and administrative measures, notification, consultation and, where appropriate, risk assessment.[179]

351. The report nevertheless identifies significant divergence concerning the scope and legal nature of due diligence. In particular, it identified two principal conceptions. Under the first, due diligence constitutes a standard of conduct associated with specific primary obligations, against which compliance with the relevant obligation is assessed. Under the second, due diligence may constitute a general obligation of a State not knowingly to allow its territory to be used for acts harmful to the rights or interests of other States, an approach associated particularly with the Corfu Channel judgment of the International Court of Justice.

352. The special rapporteur proposes that both conceptions should be examined in the Commission's work. The report notes that divergent views also existed regarding the relationship between due diligence and the distinction between obligations of conduct and obligations of result, the source and legal character of due diligence, and its relationship with the customary international law rules on the responsibility of States. The special rapporteur emphasizes that the integrity of the Commission's earlier work on State responsibility should be preserved in considering these questions.

353. With respect to the content of due diligence, the special rapporteur identifies several factors relevant to determining whether a State had exercised the requisite level of diligence in a particular case. These include the degree of risk and severity of harm, knowledge of the risk, the means and capabilities of the State, the degree of control exercised by the State over territory and persons, and the existence of preventive and monitoring measures. The report therefore approaches due diligence as a context-dependent standard whose application requires an in concreto assessment.

354. The special rapporteur further considers the legal character of due diligence and its relationship with primary obligations and the law of State responsibility. The report notes that due diligence has variously been described as an obligation, duty, general principle, standard of conduct or notion. At the same time, the report observes that widespread State practice and *opinio juris* indicate that failure to comply with the requisite standard of conduct may constitute a breach of the associated primary obligation, with consequences under the law of State responsibility.

Deliberations in the plenary meetings on the topic

355. The Commission considered the first report of the special rapporteur at its 3750th to 3756th meetings, from 29 June to 7 July 2026. Members generally welcomed the report and commended the prudent and cautious approach adopted by the special rapporteur. Several members considered

[179] ILC Report 2026, ch XI, para 231 < https://legal.un.org/ilc/reports/2026/> accessed 26 September 2026.

that the preliminary mapping exercise provided an appropriate basis for developing an analytical framework before the preparation of draft provisions.

356. Members recognized the increasing relevance of due diligence to contemporary areas of international law, including climate change, pandemics and activities in cyberspace, as well as its established relevance in international environmental law and human rights law. At the same time, members emphasized the complexity of the topic, particularly in view of variations in terminology, legal context and State practice. Several members called for greater geographical diversity in the materials examined and for closer attention to national legislation, national judicial decisions and the practice and legal traditions of different regions.

357. Considerable discussion centred on the two conceptions of due diligence identified by the special rapporteur. Some members supported the existence of an autonomous or general obligation, including as a possible corollary of State sovereignty and the obligation not knowingly to allow a State's territory to be used for acts contrary to the rights of other States. Other members cautioned against deriving a general obligation from the Corfu Channel judgment without taking account of its particular historical and factual context.[180]

358. Several members supported examining due diligence as a standard of conduct attached to specific primary obligations. It was emphasized that due diligence could constitute an intrinsic component or modality of applying a primary obligation. Members also cautioned against drawing an excessively rigid distinction between obligations of conduct and obligations of result, noting that some international obligations may contain characteristics of both.

359. Members also addressed the factors relevant to determining the required level of diligence. These included the nature, seriousness and urgency of the risk, foreseeability of harm, actual or constructive knowledge, the means and capacities available to the State, and the reasonableness of the measures available. Risk assessment, notification, consultation, information exchange, monitoring and enforcement were identified as possible procedural means through which due diligence obligations may be implemented.

360. Particular attention was given to the relevance of the capacities of States. Members observed that differences in State capacity could affect the level of diligence reasonably expected in a particular situation, while also emphasizing that differences in capacity should not result in the absence of any meaningful obligation to act. The importance of international cooperation, including through international organizations, in facilitating access to information, expertise, technology and other resources was also highlighted.

361. The Commission further considered the application of due diligence in particular fields of international law. Members referred to its established role in international environmental law and international human rights law, as well as its relevance to the law of the sea, international investment law, arms control, space law and cyberspace. In relation to cyberspace, members noted differing views and the importance of emerging State practice and *opinio juris*.

362. With regard to the final form of the Commission's work, several members supported the special rapporteur's proposal that the outcome should take the form of draft principles, considering such an approach appropriate to the cross-cutting and context-dependent character of due

[180] *Corfu Channel case*, *Judgment of April 9th*, 1949: I.C.J. Reports 1949.

diligence. Other members expressed a preference for, or openness to, alternative forms, including draft conclusions, guidelines or, in certain contexts, draft articles.

C. Future Work and Way Forward

363. In her concluding observations, the special rapporteur noted the general support expressed for the topic and the inductive methodology adopted in the first report. She acknowledged the need to ensure greater diversity of State practice and to avoid overgeneralization, particularly in light of the different contexts in which due diligence operates.

364. The special rapporteur indicated that the Commission should continue to examine both conceptions of due diligence—namely, due diligence as a standard of conduct associated with primary obligations and due diligence as a possible autonomous obligation—while recognizing the context and potential limitations of the Corfu Channel formulation. She considered that the question of whether a general autonomous obligation exists required further examination based on State practice and *opinio juris*.

365. The special rapporteur further indicated that future work would examine the relationship between due diligence and principles such as prevention, sovereignty, cooperation and good faith, as well as its relationship with primary rules of international law and the customary international law rules on State responsibility. She emphasized the need to avoid blurring the distinction between primary obligations and secondary rules of State responsibility.

366. The special rapporteur noted that the Commission should continue to examine the relationship between due diligence and obligations of conduct or means and obligations of result, with a view to providing practical guidance to States. She also proposed further consideration of the formulation of primary obligations and whether certain treaty expressions could serve as indicators or "trigger words" for the application of a due diligence standard, while recognizing the danger of overgeneralization.

367. As regards the future programme of work, the special rapporteur stated that, in light of the convergence within the Commission concerning due diligence as a standard of conduct, she intended to propose draft principles on that aspect in her second report. The second report would also examine the circumstances in which a due diligence obligation arises, including variability, knowledge, risk, severity of harm, capacity to control the activity giving rise to the risk, reasonableness and related factors. Subsequent reports would address, inter alia, the conduct required to satisfy a due diligence obligation and its relationship with the customary international law rules on State responsibility.

D. Comments and observations of the AALCO Secretariat

368. The topic of due diligence is of considerable relevance to AALCO Member States, given its application across areas including environmental law, human rights, the law of the sea and cyberspace. The first report provides a useful mapping of State practice and jurisprudence while recognizing divergent views on its scope and legal character.

369. The AALCO Secretariat considers that the Commission's practice-oriented approach should remain firmly grounded in representative State practice and *opinio juris*, reflecting diverse regions and legal traditions. Further clarification is particularly required regarding due diligence as a

standard attached to primary obligations and its possible character as a general or autonomous obligation.

370. The context-dependent nature of due diligence should also be recognized, with factors such as risk, foreseeability, severity of harm, knowledge, State capacity and available preventive measures informing the applicable standard.

371. The Commission's request for further information from States on their practice is particularly relevant to the future development of the topic. The Commission has invited information on State practice concerning due diligence in dealings with other States and non-State actors, national legislation and judicial decisions, treaty provisions, statements and pleadings before international courts and tribunals, and the criteria used to assess whether the requisite standard of due diligence has been exercised. Such information has been requested by 1 December 2026 to inform the Commission's further consideration of the topic. Given the broad reach of the topic, the Commission's work should be grounded in State practice that is geographically and legally representative. Particular attention should be paid to national legislation, domestic judicial decisions, treaty practice and official statements from different regions and legal traditions. AALCO Member States have valuable experience across fields in which due diligence questions arise, and their practice can help prevent overgeneralization from a limited or uneven evidentiary base.

372. The AALCO Secretariat respectfully encourages Member States to contribute relevant State practice, legislation, judicial decisions, treaty practice and official statements to assist the Commission in ensuring that its future work reflects diverse regional and legal perspectives. The proposed draft principles may assist in identifying common elements of due diligence while preserving flexibility according to the relevant obligation and circumstances.

XI. THE RIGHT TO REGULATE IN INTERNATIONAL INVESTMENT LAW

A. Background

373. At its seventy-seventh session, the International Law Commission considered a proposal by Ms. Vilawan Mangklatanakul entitled "The Right to Regulate in International Investment Law", as contained in Annex I to its report.[181] The proposal addresses the need to strike an appropriate balance between the protection of foreign investments and the regulatory autonomy of States in pursuing legitimate public policy objectives, including public health, environmental protection, climate change and sustainable development.

374. The proposal highlights growing concerns that international investment treaties and investor-State dispute settlement mechanisms may unduly constrain States' regulatory space. While recent investment treaties increasingly incorporate provisions safeguarding the right to regulate, many older treaties lack such protections, and arbitral tribunals have adopted differing approaches to interpreting investment protection standards, particularly fair and equitable treatment and indirect expropriation.

375. The proposed topic would examine the international legal rules governing States' right to regulate, including the police powers doctrine, general exceptions clauses, essential security exceptions and express treaty provisions recognizing regulatory autonomy. Particular attention would be given to clarifying the relationship between these rules, customary international law and investment treaty obligations, as well as their interpretation in international arbitral jurisprudence.

376. The proposal emphasizes that the Commission's work would complement existing initiatives, particularly those of UNCITRAL Working Group III on investor-State dispute settlement reform, by focusing on substantive questions of international law rather than procedural and institutional reforms. It envisages the possible development of guidelines, model clauses or illustrative treaty provisions to assist States in drafting and interpreting investment agreements while preserving legitimate regulatory space.

377. The proposed topic is of particular relevance to developing countries, including AALCO Member States, which seek to attract foreign investment while maintaining the ability to adopt measures in the public interest. Consideration of the topic by the Commission could contribute to greater legal clarity and a more balanced international investment law framework that accommodates both investment protection and States' sustainable development objectives.

B. Comments and observations of the AALCO Secretariat

378. The AALCO Secretariat notes the significance of the proposed topic for developing countries, particularly AALCO Member States, which seek to attract and protect foreign investment while preserving sufficient regulatory space to pursue legitimate public policy objectives, including public health, environmental protection and sustainable development. The proposal raises important questions concerning the interpretation of investment treaty obligations and their relationship with States' regulatory autonomy, particularly in the context of fair and equitable treatment and indirect expropriation.

[181] Annex I, ILC Report 2026, 355

379. The Secretariat considers that further examination of these substantive legal questions could usefully complement ongoing international efforts to reform investor-State dispute settlement mechanisms, particularly within UNCITRAL Working Group III. AALCO could provide a valuable forum for Member States to exchange views and share treaty practices concerning the right to regulate, thereby contributing Asian-African perspectives to any future consideration of the topic by the Commission.

XII. EXTRATERRITORIAL JURISDICTION

A. Background

380. At its seventy-seventh session, the International Law Commission considered a revised syllabus proposed by Mr. Mario Oyarzábal on the topic "Extraterritorial Jurisdiction", as contained in Annex II to its report.[182] The topic was originally included in the Commission's long-term programme of work in 2006. The revised proposal reflects significant developments in State practice, national legislation and judicial decisions concerning the exercise of jurisdiction beyond national territory.

381. The proposal examines the principal bases for extraterritorial jurisdiction, including territoriality, nationality, passive personality, the protective principle and the effects doctrine. It also addresses the distinction between prescriptive, adjudicative and enforcement jurisdiction, as well as the limitations arising from sovereign equality, territorial integrity, non-intervention and international comity.

382. Particular attention is given to emerging jurisdictional challenges involving cyberspace, cross-border data access, artificial intelligence, competition law, anti-corruption measures, corporate human rights and environmental due diligence, economic sanctions and cross-border judicial proceedings. These developments have increasingly generated overlapping jurisdictional claims and potential conflicts between national legal systems.

383. The revised syllabus identifies several possible approaches for the Commission's future work, ranging from a comprehensive examination of the general principles governing extraterritorial jurisdiction to a more focused study of particular sectors. It favours an intermediate approach combining general principles with sector-specific guidance, while recognizing that the final scope and methodology should be determined by the Commission, taking into account the views of States expressed in the Sixth Committee. The proposal also maintains that universal criminal jurisdiction should be addressed separately.

384. The proposed topic is relevant to AALCO Member States, particularly in view of the increasing extraterritorial application of national legislation affecting cross-border economic activities, digital transactions and regulatory measures. Further consideration by the Commission could contribute to greater legal clarity and predictability concerning the permissible exercise of jurisdiction, while taking into account the sovereignty and legitimate regulatory interests of States.

B. Comments and observations of the AALCO Secretariat

385. The AALCO Secretariat notes that the proposed topic raises important questions concerning the scope and limits of States' exercise of jurisdiction beyond their national territories. The increasing extraterritorial application of domestic laws, particularly in relation to economic activities, cyberspace, cross-border data, sanctions and regulatory enforcement, has significant implications for sovereign equality, non-intervention and the legitimate interests of other States.

386. The Secretariat considers that further clarification of the applicable principles of international law could contribute to greater legal certainty and help address overlapping or

[182] Annex II, ILC Report 2026, 376

conflicting jurisdictional claims. In this regard, the diversity of State practice and legal traditions, including those of Asian and African States, deserves particular attention. AALCO could facilitate exchanges among its Member States on these issues and encourage the sharing of relevant national legislation, judicial decisions and State practice for consideration in any future work of the Commission.