I COMMITTEE

THE CREATION OF AN INTERNATIONAL LEGAL REGIME TO DEAL WITH SEA LEVEL RISE

The XXXII Congress of the IHLADI,

Being aware that sea level rise caused by climate change is a global and multidimensional anthropogenic phenomenon, which is existential for low-lying coastal States, small island States and small island developing States, with effects in various fields, such as the Law of the Sea, statehood and the protection of persons, among others;

Emphasising the extreme importance of legal certainty and predictability in the different uses of the sea, which requires appropriate harmonisation of the competences and jurisdiction of States as a whole;

Stressing the extreme importance of legal certainty and predictability in the treatment of persons and populations in situations of forced displacement caused by sea level rise;

Reiterating that the evolution of International Law applicable to the treatment of persons and populations subject to forced displacement as a result of sea level rise must ensure a set of rights and duties consistent with International Human Rights Law and in accordance with the core value of the human dignity of persons and populations;

Taking into account the fundamental importance of the principle of international cooperation and the implications that sea level rise, caused by climate change, may have for international peace and security;

Taking into account the work carried out by the International Law Association on sea level rise and the conclusions summarised in Resolution 1/2024, adopted at the 81st Conference of the International Law Association, which took place in Athens (Greece) from 25 to 28 June 2024;

Taking into account in particular the work of the UN International Law Commission Study Group on Sea-level Rise in Relation to International Law, the final report of which is expected in 2025;

Adopts the following

CONCLUSIONS

1st. States affected by the phenomenon of sea level rise have the right to adopt measures to preserve their existence, both with regard to their territory and to the natural resources existing in the areas under their jurisdiction.

2nd. Coastal States must be able to define the baselines and outer limits of their maritime spaces in a stable manner, regardless of subsequent changes in their land territory due to sea level rise caused by climate change, provided that they do so in accordance with International Law and with the necessary publicity for the knowledge of third States.

3rd. States, international intergovernmental organisations, non-governmental organisations and any actor involved in the treatment of persons and populations in situations of forced displacement as a result of sea level rise must act in accordance with the fundamental value of human dignity.

4th. States should endeavour to create specific legislation on the treatment of persons and populations in situations of forced displacement caused by sea level rise, which respects their rights and duties in accordance with the fundamental value of human dignity.

5th. International cooperation is of crucial importance in dealing with the consequences of sea level rise.

II COMMITTEE

A CRITICAL ANALYSIS OF THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL EFFECTS OF JUDICIAL SALES OF SHIPS

The XXXII Congress of the IHLADI:

Considering that on December 7, 2022, the United Nations General Assembly adopted the United Nations Convention on the International Effects of Judicial Sales of Ships (the "Beijing Convention on the Judicial Sale of Ships"*) so that any judicial sale of a ship made in a State Party, within the territory of which the ship is physically present at the time of the sale and the law of which confers on the purchaser a clean title of ownership, has the full effect of a clean title in the other States Parties: the deletion of the ship from the register of the State Party where it was registered at the time of the judicial sale; and property title free and clear of any mortgage, charge or debt affecting the ship up to the time of the judicial sale.*

Considering also that the Beijing Convention on the Judicial Sale of Ships provides significant advances with respect to the uniform maritime law conventions which, to date and with a limited scope of application, regulate the judicial sale of ships: the International Conventions on Maritime Privileges and Naval Mortgages, signed in Brussels in 1926 and in Geneva in 1993.

Affirming that such significant developments include: (i) the adoption of a model certificate of judicial sale which must necessarily contain the statement that the judicial sale conferred clean title to the ship on the purchaser; (ii) the provision that the certificate of judicial sale is sufficient evidence of the matters contained therein; (iii) not allowing, as does the International Convention on Maritime Privileges and Naval Mortgages made in Geneva in 1993, the possibility for the purchaser to take over the ship with encumbrances registered with the consent of the beneficiaries of the encumbrances, thereby avoiding a reduction in the sale price of the ship to the detriment of the other creditors of the ship and international trade; (iv) the uniformity provided by the definition of the terms "judicial sale", "ship", "charge" and "registered charge"; (v) the obligation to give notice of the judicial sale of the ship to the bareboat charterer registered in the bareboat charter register and to the bareboat charter registry itself; (vi) the establishment of the minimum content of the notice, which contributes to the agility in the practice of this diligence; (vii) admitting as a party entitled to apply for the registration effects of the certificate of judicial sale the person who has purchased the vessel from the person listed as buyer in such certificate and (viii) exempting the certificate of judicial sale from the requirement of legalization or other similar formality and offering instead, to validate authenticity, the mechanism of direct communication between authorities of the States Parties and, the greatest novelty of the Convention, access to the certificate of judicial sale through the online repository on the platform of the International Maritime Organization's Global Integrated Maritime Information System (GISIS).

Noting, however, that the Beijing Convention on the Judicial Sale of Ships does not provide that conservation or general protection measures registered on a ship, ordered by a court to provisionally ensure the effects of the future decision on the merits, are charges for the purposes of the Convention and therefore should be deleted from the register in the event of a judicial sale of the ship.

Noting also that (i) the breadth of the definition of "registered charges" in the Beijing Convention on the Judicial Sale of Ships allows a mortgage registered in a State Party other than the one in which the ship is registered to be considered as such, which is not in accordance *with the general rule that rights in rem are subject to the law of the ship's flag and (ii) the temporal precision dictated by the Convention (Article 7, paragraph 1) for the deletion from the register of mortgages and other registered charges leaves open the possibility for the purchaser of the ship in judicial sale to receive the ship with charges registered after the completion of the judicial sale and before the production of the certificate of judicial sale to the registrar.*

Noting that, with respect to notice of the judicial sale, the Beijing Convention on the Judicial Sale of Ships (i) does not provide for service to the bareboat charterer when it is only registered in the main registry of the ship, (ii) does not indicate what effect the notice to the State of registry of the ship should have, delegating to the law of the State of registry to determine the actions to be taken once the notice of the judicial sale is received, (iii) does not establish any guideline as to where to send the notice addressed to the State of registry of the ship, which is especially problematic when considering that open registries with a larger number of ships operate in a decentralized manner with a presence in multiple States and (iv) does not establish a minimum time to elapse between the notice of the judicial sale and the completion of the judicial sale, that the beneficiaries of registered mortgages and encumbrances and the holders of maritime privileges may make use of to exercise their rights in the State of the judicial sale, since this is a matter of procedure subject to the law of the State of judicial sale in accordance with the Convention.

Whereas the Beijing Convention on the Judicial Sale of Ships gives the State of registry of the ship the power to request a certified copy of the certificate of judicial sale and/or certified translation in case the certificate of judicial sale is in a language other than that of the State of registration.

Noting that Ecuador, El Salvador, Honduras, Spain, the European Union, and other States have signed the Beijing Convention on the Judicial Sale of Ships, and that the required number of instruments of ratification, acceptance, approval or accession has not yet been deposited for it to enter into force.

Recognizing that the Beijing Convention on the Judicial Sale of Ships will boost international trade through legal certainty for purchasers of ships in judicial sales and protection to holders of maritime liens over ships.

Adopt the following

CONCLUSIONS

1st. Recommends the ratification, acceptance, approval, or accession to the Beijing Convention on the Judicial Sale of Ships.

2nd. Suggest to clarify, if deemed pertinent by the United Nations Commission on International Trade Law (UNCITRAL) through an Advisory Opinion, (i) if court orders registered in the State of the ship's registry or other competent authority prohibiting the disposal, encumbrance or deletion of the registration of a ship qualify as "charge" for the purposes of the Convention and should therefore be deleted from the register in the event of a judicial sale; and (ii) if "registered charge" means "*any charge that is registered in the register of ships or equivalent register in which the ship is registered or in any different register in the State where the ship is registered in which mortgages or* hypothèques *are registered*."

3rd. Advises to establish a criterion, if deemed pertinent by UNCITRAL by way of an Advisory Opinion, to establish a uniform basis on which ship registry States adopt the necessary processes to ensure that notices to their respective headquarters receive the required procedure for publicity to third parties.

4th. Recommends to each State Party to (i) adopt a broad interpretation of Article 4(3)(e) of the Convention so that prior notice of the judicial sale, in the case of a registered bareboat charter, is also given to the bareboat charterer registered in the regular ship registry, and not only in a special bareboat charter registry, to fulfil the ultimate purpose of the notice which is to make it known to all parties interested in collecting their claims from the proceeds of the judicial sale of the ship to be carried out; (ii) ensure that its procedure to give notices has the necessary mechanisms so that the notice of the judicial sale to the expanded list of recipients can be carried out expeditiously and without greater burden to the parties in the judicial sale process, (iii) incorporate in its registry regulations the obligation to make a marginal annotation, for the purposes of publicity, of the judicial sale notices that it receives as the State of registration of the ship or the State of bareboat charter registration, (iv) if not already existing, incorporate in its regulations on the judicial sale of ships the minimum time to elapse between the notice of the judicial sale and the conduction of the judicial sale to, without delaying the judicial sale process, give space for creditors with maritime liens to appear in the process with the agility typical of the industry and participate in the insolvency proceedings, (v) adapt its national definition of *authenticated copy* and *certified translation*, as necessary, so as not to give rise to legalization requirements or other formalities that have been excluded by the Convention for the certificate of sale judicial; (vi) in the absence of a rule of domestic law providing that the judicial sale extinguishes *all* obligations on the ship, incorporate a rule that extends Article 7(1)(a) of the Convention to cover "... *any registered charge attached to the ship that had been registered before completion of the judicial sale or after, provided that the charge results from a claim arising prior to the judicial sale*", in line with Article 8(1) and (2) of the Convention itself.

III COMMITTEE

WAR CRIMES, CRIMES AGAINST HUMANITY, GENOCIDE AND ENVIRONMENTAL CRIMES IN ARMED CONFLICTS

The XXXII Congress of the IHLADI,

Bearing in mind that armed conflicts cause widespread and systematic destruction, not only of human lives and historical and artistic heritage, but also of the environment.

Assuming, in conformity with the principle of distinction, the need to draw the line between military objectives and international crimes committed during armed conflicts.

Convinced that the events unfolding in Ukraine, Gaza and other current conflicts reinforce the urgent need to clarify the rules and principles for qualifying and sanctioning such actions in international law.

Noting that the evolving nature of international law and its progressive development are reflected in the characterisation of international crimes of the utmost gravity, which express the existence of international obligations essential to safeguard the fundamental interests of the international community as a whole.

Noting that the international legal regime for determining the existence of such crimes, in order to ensure their prompt punishment, is a relevant achievement of human civilisation and that its effective application should not be subject to any external restriction, aimed at limiting or avoiding the observance of the legal regime and the punishment of the perpetrators.

Recalling that, under existing international law, the unilateral use of force does not create a legal title to occupy territory, as affirmed by the ICJ in its Advisory Opinion on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory in 2004. As reaffirmed by the ICJ in the Advisory Opinion on the Legal consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including Jerusalem, in 2024.

Underlining that, without prejudice to the right to self-defence, there must be a due proportionality between the attack suffered and the reaction, so that any excess must be condemned, and all illegal and abusive practices must be investigated and sanctioned.

Adopts the following

CONCLUSIONS

1st Urge all States to ensure the capacity of their institutions and armed forces to maintain the observance and strict application of the Law of Armed Conflicts and International Humanitarian Law, in order to prevent and eliminate the practice of genocide, crimes against humanity, and other war crimes, including crimes against the environment, whether committed by State or non-State actors, as well as to prevent acts of aggression.

2nd. All evidence of the facts constituting the aforementioned crimes must be gathered, with a view to their examination, in accordance with International Law applicable to the matter.

3rd. All states must fight and take effective measures against the impunity of any person on their territory, whether a national or not, who may have committed or contributed to the commission of any of the aforementioned crimes.

4th. All states should train members of their institutions and armed forces, or any other contingents, military or not, under their direct or indirect responsibility, with the scope to ensure the observance and strict compliance with any and all applicable rules of International

Law, especially the Geneva Conventions of 1949, their Additional Protocols of 1977, as well as the Rome Statute of 1998, in order to eliminate the commission of such crimes and prevent acts of aggression.

5ft. In accordance with the provisions of Article 8.2 b) of the Rome Statute of the International Criminal Court, attacks on the civilian population constitute international crimes, as do attacks on the personnel of international organisations, humanitarian aid workers, journalists and identified civilian reporters.

6th. Preventing the delivery of humanitarian aid in armed conflicts constitutes an international crime, as must preventing the civilian population from having access to food and drinking water.

7th. Environmental damage, in armed conflicts constitutes an international crime contemplated in Article 8.2 b) iv of the Rome Statute. Even so, it is necessary for States, international organisations and international tribunals to adopt measures and contribute to the progressive development of the treatment and prosecution of environmental crimes committed during military actions, under the Principles on the Protection of the Environment in Armed Conflict, adopted by the UNGA in its Resolution 77/104 of 7 December 2022.

IV COMMITTEE

CLEAN HANDS IN INVESTMENT ARBITRATION

The XXXII Congress of the IHLADI:

Recalling the generic formulation of the doctrine of clean hands, in the sense that it is justified to restrict the exercise of a right in cases where the person invoking it has acted in bad faith, fraudulently or unlawfully.

Whereas the doctrine of clean hands and its scope are controversial in general international law, although there is some recent application of the doctrine in the field of human rights protection, in particular by the European Court of Human Rights.

Bearing in mind, however, that this doctrine, although under different names (ex delicto non oritur actio; ex turpi causa non oritur; inadimplenti non est adimplendum; ex dolo malo non oritur actio; good faith, equity, abuse of rights, fraud of law...), has an unquestionable application in arbitration practice in investment arbitration.

Affirming that the clean hands principle is based on a general principle of international law, insofar as the requirement of conduct in accordance with the principle of good faith, equity and estoppel constitutes a general principle of law generally recognised by national legal systems and by all the most representative or significant legal systems.

Noting that there are, however, differences of opinion on the effects of improper or illegal conduct by the investor, which, depending on various factors and opinions, may result in the lack of jurisdiction of the arbitral tribunal, the inadmissibility of the claim or its consideration as a matter on the merits.

Accepting that neither the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington on 18 March 1965, nor investment protection treaties provide elements to differentiate the issues or requirements of jurisdiction, inadmissibility or other procedural conditions, nor address their mandatory or dispositive character, nor does the practice of arbitral tribunals provide a clear body of doctrine in this regard.

Whereas several factors must be taken into account in determining the concrete effects of investor conduct that may be considered contrary to the clean hands principle, in particular whether or not the investment protection treaty involved contemplates the condition of the legality of the investment, whether such conduct occurs at or after the time of establishing the investment, as well as the seriousness of the conduct itself.

Adopts the following

CONCLUSIONS:

1st. The following interpretation criteria are recommended:

> i) In those cases in which the respect of the host State's legality by the investor is expressly envisaged in an investment protection Treaty and a conduct of the investor contrary to that legality takes place at the time of establishment of the investment, the declaration of lack of jurisdiction of the tribunal will be appropriate if, in the light of the interpretation of the Treaty in question, it must be understood that the State has not given its consent to the arbitration solution. It is sufficient for this purpose that such conduct violates the mandatory rules and principles of public policy of the host State. In cases where the conduct is trivial or not sufficiently serious, it may only be

considered when deciding on the merits of the decision and in the quantification of the damage and compensation, where appropriate.

ii) In those cases in which respect for the legality of the host State by the investor is not expressly provided for in an investment protection treaty, the claim shall be declared inadmissible regardless of whether the illegal conduct of the investor occurs at the time or after the establishment of the investment, provided that the conduct involves a violation of principles of transnational public order and is sufficiently serious.

iii) In those cases in which neither the declaration of the lack of jurisdiction of the tribunal nor the inadmissibility of the claim is appropriate, any conduct of the investor contrary to the principles of clean hands may be considered by the tribunal in its decision on the merits, in particular to limit the determination of the damage and possible compensation derived from the State's non-compliance.

2nd. Without prejudice to what is indicated in conclusion 1 (i), in order to weigh the seriousness and scope of the wrongdoing, the arbitral tribunal should determine the existence of a conduct sufficiently linked to the investment consisting in corruption, deceit, fraud, economic crimes, violation of human rights and any other conduct contrary to the principles of transnational public order; weigh its impact on essential policies, such as the protection of human rights, the preservation of the environment, the fight against corruption and money laundering, the protection of free competition and the protection of the market; assess the proportionality of the lack of protection of the investment in relation to the scope of the investor's conduct; and assess the concurrence of fault on the part of the host State of the investment and the degree of imputability of such conduct to the investor.

3rd. Arbitral tribunals should render their decision on the effects of the clean hands principle in relation to investor conduct through a final or partial award, once the arbitral proceedings are concluded.