



# AUSTRALIA



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## **UNITED NATIONS GENERAL ASSEMBLY 6 November 2019**

### **Report of the International Law Commission on the Work of its Seventy-First Session**

#### **Cluster III**

#### **Statement by Ms Annabel Green, Adviser, Permanent Mission of Australia to the United Nations**

(Check against delivery)

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Chair

Australia would like to make some remarks today on the Commission's work on General Principles of Law.

General principles of law have been a neglected source of international law. Past considerations of this topic have often been discrete and limited to particular principles. Similar to the Commission's work on the identification of customary international law, a comprehensive examination of the development of general principles of law will assist States to more confidently draw on all sources of international law, so that States may better understand their obligations, and resolve disputes peacefully.

We thank the Special Rapporteur, Mr Marcelo Vázquez-Bermúdez, for his First Report, which provides an insightful overview of preliminary matters to

be considered as part of the Commission's work regarding general principles of law.

We support the Special Rapporteur's proposed methodological approach to the Commission's consideration of the topic. As a preliminary point, we consider that the efforts of the Commission should be focused on elucidating the meaning of 'general principles of law' as a source of law reflected in Article 38(1)(c) of the Statute of the International Court of Justice. We would not consider Article 38(1)(c) to be a subcategory of 'general principles of law', nor would we suggest that the content of 'general principles of law' should only be determined by reference to the ICJ's jurisprudence. To that end, we agree with the Special Rapporteur's views that the Commission's work on general principles of law should be based primarily on the practice of States. We also support the Special Rapporteur's decision to limit the scope of the work, so as not to address the substance of general principles of law.

To briefly comment on the Special Rapporteur's draft conclusions, we note that in draft conclusion 3, the Special Rapporteur has proposed two categories of general principles of law. We agree with the Special Rapporteur's proposed two-step process for identifying general principles of law derived from national legal systems. In our view, in addition to identifying a rule that is common between States' legal systems, a principle of law in national legal systems must be capable of being elevated to the international legal system to be considered a source of international law. To this end, we look forward to the Commission's consideration of when and how commonalities in domestic law can be 'internationalised' to form a general principle of law applicable among States.

We also look forward to the Commission's ongoing work on the second category of principles of law – that is, those formed within the international

legal system. In particular, we would welcome clarification by the Commission on how a general principle can be formed within the international legal system, how such principles would be identified, and how such principles would differ from customary international law.

Australia commends the progress made by the Special Rapporteur and the Commission in their preliminary reports and look forward to the Commission's ongoing work on this topic.

Thank you Chair.