



# IRELAND

Statement by

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at the

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Agenda Item 82:

The Report of the International Law Commission on the Work

of its 72<sup>nd</sup> Session

Cluster III - Chps: VII (Succession of States in respect of State responsibility) and VIII  
(General principles of law)

New York, 2 November 2021

## General Principles of Law:

Madam Chair,

1. I wish to thank you for the opportunity to comment on the third cluster of issues contained in the International Law Commission's Report. I will focus today on the topic "**General Principles of Law**".
2. I would like to thank Special Rapporteur, Mr Marcelo Vazquez-Bermudez, for his well-researched work, demonstrated in his second report on this topic and to the Secretariat for preparing the memorandum surveying the case-law of international courts and tribunals which has assisted him in his work. My delegation is also grateful to the Drafting Committee and to the plenary of the Commission for their work as outlined in the Chapter VIII of the Report.
3. In Ireland's view, this is an important topic and we hope that the work of the Commission will provide some much-needed clarity on general principles of law as a source of international law.
4. Ireland agrees with the Special Rapporteur's general approach that the criteria for identifying general principles of law must be sufficiently strict so as to prevent them from being used as a shortcut to identifying norms of international law, and at the same time flexible enough so that identification does not become an impossible task. We agree that the outcome of this work should be a set of draft conclusions supported by commentaries.
5. Ireland welcomes the provisional adoption by the Commission of draft conclusions 1, 2 and 4, along with their commentaries, and commends the Commission for the progress made to date. We will address each of the three draft conclusions in turn, before making some brief remarks on the other draft conclusions presented by the Special Rapporteur.
6. Ireland welcomes the fact that it has been possible to provisionally adopt **draft conclusion 1**, following careful consideration of the terminology to be used in the different language versions. We welcome the Commission's reaffirmation that general principles of law are a source of international law as indicated in Article 38(1)(c) of the Statute of the International Court of Justice. We also welcome the clear explanation of the aim of the draft conclusions in the commentaries. In relation to the definition provided for a "source of international law" in part (3) of the commentary to draft conclusion 1, we would suggest that the words "in the context of these conclusions" might be inserted, so that it would state: "The term "source of international law" **in the context of these conclusions** refers to the legal process and form through which a general principle of law comes into existence." In Ireland's view, this would add clarity to this section.
7. Ireland welcomes the reaffirmation in **draft conclusion 2** that for a general principle to exist, it must be recognised by the community of nations. We welcome the

Commission's intention to develop in the draft conclusions the specific criteria for determining whether a general principle of law exists at a given time.

8. We suggest, however, that draft conclusion 2 could be clarified by the addition of the words "as a source of international law"; so that it would state: "For a general principle of law to exist **as a source of international law**, it must be recognised by the community of nations". This would also provide a helpful link to draft conclusion 1.
9. As previously indicated, Ireland welcomes the removal of the inappropriate and outdated term "civilized nations" and supports the Commission's use of the term "community of nations" in draft conclusion 2, instead. Ireland notes that this term appears in Article 15, paragraph 12 of the International Covenant on Civil and Political Rights, a treaty which is widely accepted by states parties. We agree with the Commission's aim of ensuring that all nations participate equally, without any kind of distinction, in the formation of general principles of law, in accordance with the principle of sovereign equality. Ireland agrees with the position expressed by some members of the Commission that this term allows for just enough flexibility, while also welcoming the Commission's clarification that the term is not intended to modify the scope or content of Article 38(1)(c) of the Statute of the International Court of Justice. We agree that the term "community of nations" is not to be confused with the term "international community of States as a whole" found in Article 53 of the Vienna Convention on the Law of Treaties.
10. With respect to **draft conclusion 4**, Ireland notes that it deals with "identification of general principles derived from national legal systems" and considers that the Commission may have to return to this issue when it has concluded its deliberations on the existence of the second mooted category, i.e. general principles formed within the international legal system.
11. Ireland notes the two-step analysis introduced by draft conclusion 4 for **identifying general principles of law deriving from national legal systems**, and welcomes the clarification in the commentary that this analysis is aimed at demonstrating that a general principle of law derived from a national legal system has been "recognised", thus providing a link to draft conclusion 2. We note, however, that the title of draft conclusion 4 refers to "identification" of general principles of law, while the chapeau uses the term "determine". We suggest that for consistency and clarity, the same term should be used. We note that in the French version of draft conclusion 4, the same term is used both in the title and in the chapeau: "Détermination" and "déterminer". Ireland suggests that this approach should be followed in the English version of draft conclusion 4.
12. Regarding the first step of the two-step analysis, i.e. the requirement to ascertain the existence of a principle common to the various legal systems of the world, we welcome the Commission's broad and inclusive approach reflected in the use of the term "various legal systems of the world" (rather than the "principal" legal systems),

which is further developed in draft conclusion 5 (which should also use the term “various”, as indicated in the Drafting Committee).

13. Regarding the requirement of “transposition to the international legal system” set out at part (b) of draft conclusion 4, we agree that the term “transposition” is preferable to the term “transposability”. We note the clarification that this is not intended to suggest that a formal or express act of transposition is required and agree that such an act is not required by Article 38(1)(c).
14. Turning now to the other draft conclusions adopted by the Special Rapporteur, we agree that it will be necessary to consider draft conclusion 3 insofar as it relates to the second mooted category of general principles, namely **general principles formed with the international legal system**, together with draft conclusions 6 and 7. In this regard, Ireland notes the divergence of views both within the Commission and the Sixth Committee regarding the existence of this category of general principles.
15. Ireland agrees with the view expressed by some members that further examination of this issue would be helpful. Ireland considers that the provision of examples of practice and case law is particularly valuable when analysing the viability or otherwise of this category of general principles. We welcome the Special Rapporteur’s commitment to further considering this issue and his willingness to work with members of the Commission in that respect.
16. Ireland previously emphasised the importance of distinguishing between general principles of law and customary international law and ensuring that this distinction is clearly reflected in the draft conclusions and commentaries. Ireland is pleased to note, therefore, that the Special Rapporteur has sought to distinguish between these two sources of international law and has provided some examples of how the two sources differ. We would suggest, nonetheless, that this issue could be examined in further detail in future reports.
17. In this respect, Ireland welcomes the Special Rapporteur’s proposed future programme of work and his intention to address the functions of general principles of law and their relationship to other sources of international law. We look forward to the Special Rapporteur’s careful consideration of these two important issues.
18. Ireland will continue to follow this topic closely and again thanks the Special Rapporteur and the Commission for their work and attention to date.

Thank you, Madam Chair