



**Sixth Committee**

**United Nations General Assembly 77<sup>th</sup> Session**

**Statement of Ireland on Agenda item 77:**

**Report of the International Law Commission on the work of its  
seventy-third session**

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

**Delivered by Aoife Ní Chearbhaill, legal adviser**

*New York, 2 November 2022*

## **General Principles of Law:**

Mr / Madam Chair,

1. I would like 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. Ireland appreciates the work of the Commission on this topic, as outlined in Chapter VIII of the Commission's Report. I would also like to thank Special Rapporteur, Mr Marcelo Vazquez-Bermudez, for his work in preparing his third report on General Principles of Law. Ireland acknowledges that the task of clarifying the law on this topic is a difficult and complex one, and welcomes the work of the Special Rapporteur to date.
3. We note that this year the Commission has provisionally adopted **draft conclusions 3, 5 and 7** along with the commentaries thereto. This is notwithstanding the considerable controversy that remains regarding what the Special Rapporteur and the Commission have described as the 'second category' of general principles of law, namely '**general principles of law formed within the international legal system**'. Last year at the Sixth Committee, Ireland expressed the view that the provision of examples of practice and case law would be particularly valuable when analysing the existence of this category of general principles of law. We also highlighted 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, in particular with respect to the 'second category' of general principles of law.
4. We note that the footnotes to the commentary relating to **draft conclusion 3** do provide some examples of support in the jurisprudence of international courts and tribunals for the existence of the second category of general principles, which is of interest. However, in Ireland's view the draft conclusions and their commentaries would benefit from a more thorough examination of the case law of international courts and tribunals, in order to determine whether this second category can truly be deemed to exist. It would also be helpful to include those examples of case law which support the existence of this category within the body of the commentaries, rather than in the footnotes.
5. Ireland is also of the view that the draft conclusions in their current format do not sufficiently distinguish between general principles formed within the

international legal system, on the one hand, and rules of customary international law, on the other. Although the Commission proposes a different test for identifying general principles formed within the international legal system, in Ireland's view there is a real risk that the draft conclusions might blur the line between different sources of international law, rather than providing much-needed clarification in this area of law.

6. Ireland notes that some members of the Commission cautioned against engaging in an exercise of progressive development in a topic concerning one of the sources of international law. My delegation agrees with this position. Although the Commission of course enjoys a mandate with respect to the progressive development of law, in our view such development is not appropriate in the current project, which should aim to clarify rather than develop this area of law.
7. Ireland notes that in the commentary to **draft conclusion 7**, the Commission recognises that differing views exist regarding a 'second category' of general principles. We welcome the fact that the Commission has invited further comments by States, before completion of the first reading.

Mr / Madam Chair,

8. While Ireland does not at this point express a definitive view on the existence or otherwise of a category of general principles of law formed within the international legal system, our view is that further detailed work is required with respect to this category and we remain to be convinced. It is not clear – and in our view the draft commentaries accompanying draft conclusions 3 and 7 do not satisfactorily demonstrate – that what might be presented as a general principle of law formed within the international legal system is not in fact a principle of customary international law. Nor is any such general principle expressly identified in the commentaries, and the reader is asked to consult the judgment of a court or tribunal referenced in a footnote.
9. In Ireland's view, ultimately it may not be appropriate or helpful to include a category of 'general principles formed within the international legal system' in the final version of the draft conclusions, while such uncertainty remains regarding the very existence of this category.
10. Finally, with respect to **draft conclusion 7**, we would welcome an explanation from the Commission for its use of the term 'Identification' in the title while the verb 'to determine' is used in the body of the conclusion itself. This is in contrast to the approach taken in the French language version where 'détermination' and

'déterminer' are used, and raises the question of whether there is a difference between 'identification' and 'determination.'

11. Moving on to the functions of general principles and the relationship between this source and other sources of international law, we note that the Commission has opted merely to 'take note' of **draft conclusions 10 and 11** on this occasion. In Ireland's view, some further clarification is also required regarding those draft conclusions, before they can be finalised.
12. In my delegation's view, there would appear to be a contradiction between **draft conclusion 10, paragraph 1** which states that general principles of law are mainly resorted to when other rules of international law do not resolve a particular issue (with which Ireland agrees), **and draft conclusion 11, paragraph 1**, which states that general principles of law are not in a hierarchical relationship with treaties and customary international law. In Ireland's view, **draft conclusion 10, paragraph 1** suggests that there is, in fact, a hierarchy between sources of international law, with treaty law and customary international law taking precedence. We would welcome further explanation, therefore, with regard to the observation that there is no hierarchy between these sources of law.
13. Ireland will continue to follow the work of the Special Rapporteur and the Commission, and looks forward to engaging further on this important topic.

Thank you, Mr / Madam Chair