



STATEMENT OF THE REPUBLIC OF THE PHILIPPINES

delivered by
ATTY. MELISSA ANNE TELAN
Director, Office of Treaties and Legal Affairs
Department of Foreign Affairs

Item 79: Report of the International Law Commission on the work of its seventy-first session (Cluster III: Chapters VII and IX) Sixth Committee

74th Session of the United Nations General Assembly

06 November 2019, Trusteeship Council Chamber
UN Headquarters New York

The Philippines thanks Mr. Pavel Sturma for his work as the Special Rapporteur for the topic “Succession of States in respect of State responsibility”.

Our intervention will focus on the topic “**General Principles of Law**”. We thank Special Rapporteur Marcelo Vazquez-Bermudez for his exhaustive and in-depth first report. As general principles of law are a direct source of rights and obligations, clarification of this source of international law is pragmatic and of particularly high importance for the Philippines.

We agree that the starting point for the Commission’s consideration of the topic must be Article 38, paragraph 1(c) of the Statute of the International Court of Justice, which identifies “the general principles of law recognized by civilized nations”, as one of the sources of international law. This is reflected in draft conclusion 1. It is right that the elements of this seemingly simple formulation be analyzed. Although it is admittedly a complex study in relation to the concepts of what constitutes “general principles of law” and “recognition”, our view is that the third element – the term “civilized nations” -- is an outdated colonial concept that may no longer be of any normative value or may need to be replaced with a more inclusive formula like the ‘community of nations’.

In this regard, we agree with the initial assumption and formulation of draft conclusion 2 that for a general principle of law to exist, it must be generally recognized by States, while noting the views expressed that there could be other actors involved in the formation of general principles of law, including international tribunals and international organizations.

In the Philippines, it is the “generally accepted principles of international law” that are adopted as part of the law of the land, as provided for by our Constitution.¹ Our jurisprudence clarifies that the term “generally accepted principles of international law” includes “general principles of law” as the term is understood in Article 38(1)(c) of the Statute of the International Court of Justice.²

Philippine jurisprudence³ also provides that general principles of law are principles established by a process of *reasoning* based on the common identity of all legal systems. Its nature as a primary source of obligation is derived from its “*jus rationale*” character and are “valid through all kinds of human societies”. These principles were developed by the use of international courts of concepts from municipal laws, to fill in gaps and/or address weak points using legal reasoning and analogies drawn from said municipal laws. If there is doubt, one must look at state practice to determine whether municipal law provides a just and acceptable solution.

That being said, the Philippines believes that the ILC should first determine if there exists sufficient state practice to consider as general principles of law “those formed within the international legal system”, as provided for in Draft conclusion 3 (b). Even though the *travaux préparatoires* of the ICJ Statute do not preclude this, given that general principles of law traditionally derive from municipal or domestic law, further study by the Commission on this matter may be more prudent.

On the suggestion to come up with an illustrative list of general principles, we are concerned that this exercise may dilute – rather than clarify – the matter. Although we would caution against such an effort at this stage, which could distract us from the core issues, we would consider submitting an illustrative list at a later stage as part of the commentaries.

On the proposed future programme of work, the Philippines supports the study on the functions of general principles of law and their relationship with other sources of international law, including the issue of hierarchy and whether general principles of law are supplementary in nature. Examination of its relationship with customary international law is needed to avoid confusion between them and provide clarity with respect to these two sources of international law.

However, we do not support addressing “regional” or “bilateral” general principles of law at this time. For us, the term “general” as envisaged in Article 38 (1)(c) of the ICJ Statute contemplates application to normally all states as a whole.

Finally, on the final product of the Commission’s work on this, we support the proposal that this should be in the form of Conclusions with commentaries as the purpose for including this in the Commission’s work programme is to elucidate the concept of general principles of law as a source of international law and to examine state practice on it. Thank you.

¹ Article II, Section II, 1987 Constitution.

² *Pharmaceutical and Health Care Association of the Philippines v. Duque, et. al.*, G.R. 173034, citing dissenting opinion in *South West Africa (Liberia v. South Africa)*, 1966 I.C.J. 296 [October 9, 2007].

³ *Ibid.*