



PHILIPPINES

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STATEMENT

Permanent Mission of the Republic of the Philippines to the United Nations
Agenda Item - 82: Report of the International Law Commission
on the work of its seventy-second session

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

Sixth Committee

76th Session of the United Nations General Assembly
3 November 2021, Conference Rooms 1-3
UN Headquarters New York

Madam Chair,

The Philippines commends Special Rapporteurs Mr. Pavel Sturma and Co-Chairs Mr. Marcelo Vazquez-Bermudez for their contribution to the work of the ILC, respectively, on “Succession of States in respect of State responsibility” and “General Principles of Law”.

We wish to provide general observations on the topic “General Principles of Law”. We thank the Special Rapporteur’s for the second report which addressed the methodology of the identification of general principles of law in the sense of Article 38, paragraph 1(c) of the Statute of the International Court of Justice and contained six draft conclusions as well as the Secretariat for the memorandum on the survey of relevant case of inter-state tribunals, noting that both documents were considered by the Commission.

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 appreciate the careful consideration made by the Special Rapporteur of this matter. In particular, he cited convergence of opinion that the starting point for the Commission’s

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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. He also noted the broad consensus that recognition is an essential condition for the existence and identification of general principles of law; that the term “civilized nations” is anachronistic and should be avoided. He cited the unanimous support for the first category of general principles of law derived from national legal systems while there are doubts expressed as regards the second category of general principles of law, those formed within the international legal system. These observations coincide with the Philippines’ views, as set out in its intervention on this topic during the 74th session.

On Part Two of the Report, on the identification of general principles of law derived from legal systems, we note the two-step analysis required, through (a) first, the determination of the existence of a principle common to the principal legal systems of the world; and (b) the ascertainment of the transposition of that principle into the international legal system.

This consequently requires a comparative analysis of the national legal systems – or the principal legal systems of the world – to figure out whether a principle has been generally recognized by the community of nations. We also note that materials relevant to the analysis were indicated, including legislation and decisions of national courts.

We have had the occasion to share that 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 basic law, the Constitution. Our Supreme Court has further clarified 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.

Philippine jurisprudence 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.

Although we could support the use of domestic legal sources for this comparative analysis, we would like to further study the argument that rules by international organizations could be taken into account as well.

On the second step, we agree that the transposition of a principle common to principal legal systems of the world to the international legal system is not automatic. We do note that there may be challenges as regards the two requirements. On the first requirement, that the principle must be compatible with fundamental principles of international law, this is premised on the existence and previous identification of such principles. We would need further clarification in this regard. Further consideration must be made on the second requirement, that requirements must exist for the adequate application of the principle in the international legal system.

On Part Three of report, on the identification of general principles of law formed within the international legal system, the Philippines reiterates its view that the Commission 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 proposed future programme of work, the Philippines supports the intention of the Special Rapporteur to address the functions of general principles of law and their relationship with other sources of international law. Examination of its relationship with customary international law, for instance, is needed to avoid confusion between them and provide clarity with respect to these two sources of international law.

Finally, we also support the Special Rapporteur's proposal that the Commission provide at the end of its work a broadly representative bibliography of the main studies relating to the general principles of law.

Thank you.