



ESPAÑA

STATEMENT

BY THE SPANISH DELEGATE OF THE
INTERNATIONAL LEGAL OFFICE
OF THE MINISTRY OF FOREIGN AFFAIRS, EUROPEAN UNION AND
COOPERATION OF SPAIN

Mr. Manuel Baena Pedrosa

AT THE SIXTH COMMITTEE
OF THE 76th SESSION OF THE GENERAL ASSEMBLY

**Agenda item 82: Report of the International Law Commission
on the work of its seventy-second session – CLUSTER III**

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(Unofficial translation. Check against delivery)

Thank you very much, Mr. Chairman.

The Spanish delegation is grateful for the opportunity to speak in this third and final cluster, to which chapters seven, on the succession of States in relation to State responsibility, and eight, on general principles of law, have been reserved. Before going into each of these questions, we would like to acknowledge once again the efforts made by the members of the Commission in this last complex year, thanks to which we can see the progress that has been made in the areas covered by this third cluster, to which we are to refer below.

General principles of law

Chapter Eight of the Report deals with the issue of general principles of law. During the current session, the Special Rapporteur's second report was presented, and new draft conclusions were proposed. First of all, this delegation acknowledges the efforts of the Special Rapporteur, Mr. Marcelo Vázquez Bermúdez, to address a legally complex subject, on which we have already had occasion, throughout these sessions, to note the existence of conflicting views on the legal nature, on the substance, of a subject - the general principles of law - which is of unquestionable interest to Spain.

This presence of different views leads us to recall, at least briefly, the position of this delegation in this respect: the general principles of law are a true source of international law, therefore different from treaties and custom. Their function is to fill gaps in the legal system through the application of a procedure that the Commission is currently examining. With regard to this question, we wish to reiterate what has already been said in the past concerning the dual origin, national or international, of the general principles of law. We have no doubt that by applying the basic categories of the General Theory of Law it is not possible to exclude the possibility of identifying general principles of law formed within the international order. And this irrespective of the practical difficulty that may exist for their identification. We take good note of the fact that this question has been the subject of discussion within the Commission. The Commission has prudently decided to wait until the next session to take a decision on the matter. We trust that the Commission will be able to return to this issue and definitively adopt draft conclusion 7.

On the other hand, we agree with the Special Rapporteur that the starting point is Article 38.1.c of the Statute of the International Court of Justice as it has been jurisprudentially interpreted and in view of the practice of States. Spain welcomes the use of the terminology "principios generales *del* Derecho", which is

commonly used in Spanish to refer to this legal category, and which has been included in the Diccionario Panhispánico del Español Jurídico.

Still on the subject of terminology, my delegation shares the concern of the Special Rapporteur and the Commission with regard to the expression "civilized nations", which appears in article 38 (1)(c) of the Statute of the International Court of Justice. Indeed, this expression is very anachronistic and seems to introduce terminology that is not compatible with the principle of sovereign equality. We are therefore pleased to note that the Commission has decided not to continue to use these terms, and we share the solution of using the terminology of Article 15(2) of the International Covenant on Civil and Political Rights. Although this article uses different terminology in each of the language versions, the Commission's choice to reproduce the text of each of these versions (in Spanish, "comunidad internacional") seems to us to be correct. Paragraph 3 of the commentary to Conclusion 2 sufficiently clarifies the meaning of the new terminology used and avoids any confusion that might arise from the use of different terms in each of the language versions.

With regard to the approach adopted by the Special Rapporteur, we find adequate what is stated in paragraph 174 of the Report, according to which he should "refer to the legal nature of general principles of law as one of the sources of international law, and to the scope and functions of such principles and their relationship to other sources of international law, as well as to the method of identifying them". We are pleased to note that the Special Rapporteur has taken into consideration the suggestions made by Spain in defining the scope of the topic: "nature, origin, functions and identification of general principles as a source of international law".

With regard to draft conclusion 4, this delegation considers the two-stage system for establishing the existence of a general principle of law to be appropriate, since, as we pointed out at a previous session, the establishment of a system capable of identifying general principles is of the utmost importance. And, in this respect, we agree that the expression "legal systems of the world" is sufficiently concrete.

With regard to the future work program, the Spanish delegation considers it appropriate to devote the next report to the functions of the general principles of law and their relationship with other sources of international law. We await with interest the next report of the Special Rapporteur, as well as the work of the Commission on this interesting topic.

Succession of States in relation to State responsibility

With regard to the seventh chapter of the Report, which deals with the succession of States in relation to State responsibility, Spain wishes to thank the

Special Rapporteur, Mr. Pavel Sturma, for the presentation of his fourth Report, and the Commission for its work on it.

This delegation has taken note of the progress made on this complicated subject during the present session, but cannot fail to emphasize that more than ten draft articles on topics of considerable interest are still pending before the Drafting Committee. In addressing them, especially as regards the legal consequences of wrongful acts and reparation, we wish to draw attention to the need for consistency with the Draft Articles on Responsibility of States for internationally wrongful acts.

With regard to the future programme of work, the issues proposed by the Special Rapporteur (plurality of injured successor States and plurality of responsible States) are, in our view, correct. Spain looks forward with great interest to the next report of the Special Rapporteur and hopes to see significant progress in the work in 2022.

Having reached the end of this intervention corresponding to the third of the clusters, Spain once again expresses its gratitude to the members of the International Law Commission and hopes for the successful completion of all the work currently underway.

Mr. Chairman,

Spain's commitment to the progressive development and codification of international law is absolute. That is why my country, as a member of the Sixth Committee, recognizes, values and defends the valuable working relationship between this Committee of the General Assembly and the International Law Commission. This relationship has made possible the development of the provisions of the Charter regarding the progressive development and codification of international law. For this reason, we are also grateful once again for the opportunity to speak in this debate.

Thank you very much, Mr. Chairman.