

General Assembly
Seventy-seventh Session
Sixth Committee
2 November 2022
Agenda item 77:
Report of the International Law Commission on
the work of its seventy-third session

Cluster III

Succession of States in respect of states responsibility (Chapter IV)
General principles of law (Chapter VIII)

Statement by Norway on behalf of the Nordic countries

Mme./Mr. Chair,

At the outset, I would once again like to thank the International Law Commission for its important work.

I have the honour to deliver this statement on behalf of the five Nordic countries Finland, Iceland, Denmark, Sweden, and my own country Norway.

Mme./Mr. Chair,

The Nordic countries would like to thank the Special Rapporteur Pavel Šturma for his interesting and comprehensive fifth report on **Succession of States in respect of State responsibility**. This report provides us again with valuable insights into the challenging intersection of law on State succession and law on State responsibility. We are pleased with the thorough consideration the Special Rapporteur has given to the comments of States throughout his work on this topic. At this point we would also like to express our appreciation to the Special Rapporteur for his valuable contribution during his years as a member of the International Law Commission.

In his fifth Report the Special Rapporteur has focused primarily on situations where there are several injured successor States and/or multiple responsible successor States. No new provisions were proposed this time. The Report is written with the conclusion of a first reading in sight and also gives some ideas for the structure of the future final outcome on this topic. Together with this Report, the summary of the work accomplished so far in Chapter VII of the Commission's 2022 Report forms a good basis for further work on this topic. However, this time we would like to refer to our earlier comments on this topic and look forward to providing additional detailed comments on the substance as the work progresses further.

We take note of the Commission's decision to the effect that the work on this topic will take the form of draft guidelines rather than draft articles. Although we for the sake of consistency with the Commission's earlier work, earlier expressed a slight preference for draft articles, we would have nothing against draft guidelines either. For us the form of the outcome is not of major importance, what counts is a well-drafted and balanced set of provisions that will be useful in practice.

Finally, as has been said before, State succession is a rare occurrence and the availability of State practice is limited. Therefore, we encourage the Commission to maintain a prudent approach as work with this topic continues on the basis of the excellent groundwork laid by Professor Šturma. The Nordic countries are looking forward to the continuing collaboration with the Commission on this topic.

Mme./Mr. Chair,

Regarding the topic of **General principles of law**, I would like to thank the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez on behalf of the Nordic countries, for his third report on the topic of general principles of international law.

His well-researched and well-structured work provides a solid foundation for this interesting topic that complements the International Law Commission's earlier work on the principal sources of international law.

Overall, the Nordic countries subscribe to the general approach of the Special Rapporteur. We would like to recall our previous statement on this topic that a cautious approach is warranted given the many sensitivities at play and the significance of the topic.

The Nordic countries would like to provide the following comments to the Special Rapporteur's third report and the Commission's latest work on the topic:

First of all, we commend the thoroughness of the Special Rapporteur's work and the broad survey of relevant State practice, jurisprudence and teachings. It is imperative that the Commission's work on this topic remains sufficiently anchored in the primary sources of international law. We would like to stress the importance that the conclusions drawn are adequately related to the practice and opinion of States, and that the work on this topic avoids an overreliance on subsidiary means for the determination of law, in the form of judicial decisions and the opinions of individual writers.

The Nordic countries agree that there is no *formal* hierarchy between the primary sources of international law. However, we must also stress that general principles of law in practice play a subsidiary role, mainly as a means of interpretation, filling gaps or avoiding situations of non liquet. The ICJ has only rarely referred explicitly to principles of international law and, primarily, in the context of procedural obligations rather than substantive law obligations.

In light of cases cited in the third report of the Special Rapporteur, we would like to stress that the invocation of the term 'principle' in the course of a legal argument does not necessarily mean that this term is invoked in a legal sense, as a reference to a legal source of its own, or that it supports the existence of a certain principle as a legal source of its own.

The Nordic countries would like to stress the importance of distinguishing clearly and systematically between practice supporting the existence of a general principle, or general principles as a source of law, and cases where invocation of the term 'principle' may not be intended or justifiable as a reference to a general principle within the meaning of article 38 (1) c of the Statute of the ICJ.

Recalling our prior statements on this topic, the Nordic countries welcome the decision to substitute the term "civilized nations" for a more updated and appropriate terminology in the form of "community of nations" in draft conclusion 2 and draft conclusion 7, paragraph 1. The Nordic countries would, however, like to repeat our previous statement that the term "international community of States" is preferable to the term "community of nations". This would be clearer and more in line with standard terminology and also correspond better to the fact that states are the primary subjects of international law.

The Nordic countries agree with draft conclusion 3, that general principles may either be derived from national legal systems or formed within the international legal system. We would, however, prefer more instances of state practice and *opinio juris* to support the conclusions drawn in the commentary to draft conclusion 3. The Nordic countries also agree with the two-step approach to the identification of general principles derived from national legal systems, enshrined in draft conclusions 4, 5 and 6. We note the importance of the second criterion in draft conclusion 4, namely that the principle derived from national legal systems must be transposable to the international legal system.

While we agree that general principles of law can emanate also from the international legal system, as highlighted by draft conclusion 7, we do, however, consider that there is a certain inconsistency between the formulations in paragraphs 1 and 2 of draft conclusion 7. Paragraph 1 proposes the existence of a condition for the determination of a general principle of law, namely that the community of nations has recognized the principle as *intrinsic* to the international legal system. Paragraph 2, on the other hand, envisions a possible existence of general principles of law formed within the international legal system on conditions other than those referred to in paragraph 1, which makes it unclear what the relevance of the proposed condition in paragraph 1 is, if any. The Nordic countries support the approach taken in draft conclusion 7 paragraph 1, that a general principle of law emanating from the international legal system should have to be recognized by the international community of nations as intrinsic to the international legal system.

The Nordic countries agree with the basic assertions in draft conclusions 8 and 9 that judicial decisions and teachings of the most highly qualified publicists may serve as subsidiary means for the determination of general principles of international law. However, we believe that inclusion of these as separate draft conclusions is unnecessary and inappropriate. The relevance of judicial decisions and teachings in the determination of international law is a matter best dealt with in the context of a work specifically concerned with those subsidiary means for the determination of rules of law, which has in fact recently been included in the Commission's programme of work.

The Nordic countries welcome the proposed formulation of draft conclusion 10 as an accurate reflection of the actual function of general principles of law in international legal practice, namely the residual characteristic of this particular source of international law and its particular relevance in terms of contributing to the coherence of the international legal system. We encourage the Special Rapporteur and the Commission to consider whether it would be better to highlight the particular traits identified in draft conclusion 10, paragraph 2, letter a and b, in the commentaries, rather than identify them in the text of a draft conclusion, as these traits are common to all primary sources.

The Nordic countries also welcome the proposed structure and formulation of draft conclusion 11. We believe that this offers an accurate reflection of the basic interplay between general principles of law and the other primary sources of law, treaties and customary international law. Considering the subsidiary and residual role of general principles, and the fact that the primary sources are commonly operationalized in successive order, we would prefer if this was better accommodated for in the text of draft conclusion 11 paragraph 1. For example by adding the word "formal" before hierarchical, so that it reads: "General principles of law, as a source of international law are not in a formal hierarchical relationship with treaties and customary international law".

Finally, let me add that the Nordic countries support the proposed outcome of this process, namely draft conclusions accompanied by commentaries.

We look forward to the continued collaboration with the Commission as it progresses its work on this topic.

Thank you.