



SIXTH COMMITTEE

CHECK AGAINST DELIVERY

Statement by

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Report of the International Law Commission on
the work of its seventy-third session – Cluster III

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Mr. Chairperson,

As we approach the end of the ILC debates in the Sixth Committee this year, Israel would like to thank the Rapporteurs for their close attention to these important discussions, and hope that the information provided by states was found useful.

With regard to the topic “**General principles of law**”, Israel would like to make some comments that we hope would contribute substantively to the debate. Israel thanks the Special Rapporteur for his third report. Israel attributes great importance to the work of the Commission on the sources of international law. At the outset, Israel would like to highlight the importance of clarifying the difference between general principles of law and other sources of international law, mainly customary international law, as they represent sources that differ in scope and application. Furthermore, Israel takes note of the statement by the Special Rapporteur in the ILC report that caution on this issue is required. This is especially pertinent with regard to Draft Conclusions 3(b) and 7, which regard the proposed second category of general principles, those “which may be formed within the international legal system”.

Mr. Chair,

In general, Israel would like to reiterate its reservations regarding this category. We understand that there are also significant disagreements on this matter within the Commission, and the Drafting Committee in particular. In Israel's view, the fact that there is no general agreement concerning the very existence of such a putative source of international law among States and members of the Commission - and not merely disagreement regarding its nature or contours - calls for extreme caution when considering this matter. This may well be - in and of itself - a sufficient reason not to consider principles of this category as a source of international law.

With regard to Draft Conclusion 3(b), Israel maintains that so far, State practice in support of the existence of the proposed second category appears to be lacking. The draft commentaries to Draft Conclusion 3(b) refer only to judicial decisions by international tribunals, whereas it appears that the Draft Conclusions, in general, give a primary role to State practice. For example, Draft Conclusion 2, which applies to general principles of the second category, states that “[f]or a general principle of law to exist, it must be recognized by the community of nations”. The draft commentaries to Draft Conclusion 2 essentially suggest that the term “community of nations” refers primarily to States. Hence, the reference in the commentaries to Draft Conclusion 3(b) only to judicial decisions of international tribunals to support the text seems to be at odds with the noted emphasis on State practice. If this Draft Conclusion were to be maintained, it would be advisable to also cite relevant State practice.

Mr. Chairperson,

With regard to the Draft Conclusion 7(1), which relates to the methodology for identifying general principles of the second category, Israel takes note of the text proposed by the Drafting Committee. At its current phrasing, Draft Conclusion 7(1) states that in order to determine whether a general principle has been formed within the international legal system, “it is necessary to ascertain that the community of nations has recognized the principle as intrinsic to the international legal system.” Neither the current text of the Draft Conclusion, nor the commentaries thereto, provide necessary clarifications. Primarily, the expression “intrinsic” in this context is vague and open to multiple interpretations. This, in turn, may undermine the coherent application of the Draft Conclusion. As the Special Rapporteur stated in the report of the Commission, Israel agrees that the main challenge in this context lies in formulating a clear and precise methodology for the identification of such general principles. Israel encourages the Commission to dedicate as much time as necessary to meet this challenge.

Israel would also take this opportunity to comment on Draft Conclusion 7(2). According to this paragraph, the methodology proposed in Draft Conclusion 7(1) is “without prejudice to the question of the possible existence of other general principles of law” of the same category. The stated aim of the Draft Conclusions, as expressed in the commentary to Draft Conclusion 1, is to clarify the scope of general principles of law and the method for their identification. In light of this aim, Draft Conclusion 7(2) might not be appropriate as it could be construed as creating a significant exception to the criteria set out by Draft Conclusion 7(1), potentially encouraging the development of “other” general principles without objective criteria.

Israel suggests therefore that the ILC consider deleting Draft Conclusion 7(2) or redrafting it so that it better corresponds with the aim of the Draft Conclusion.

Mr. Chairperson,

On a final note, Israel reiterates its agreement with Draft Conclusion 5(2), according to which in order to determine the existence of a principle common to the various legal systems of the world, a wide comparative analysis must be conducted, as to encompass the different regions of the world. In this context, Israel would like to reiterate its position that a principle could be considered as ‘general’ *per se* only if it is to be found in an overwhelming number of legal systems of States belonging to diverse legal traditions.

Regarding Draft Conclusion 5(3) and its commentary, Israel recalls its reservation concerning the use of the term “other relevant materials”. In Israel’s view, the commentary should be amended to clarify that the term “other relevant materials” only refers to materials that clearly represent the authoritative legal view of the relevant State.

I thank you, Mr. Chairperson.