



PHILIPPINES

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STATEMENT

Permanent Mission of the Republic of the Philippines to the United Nations

Agenda Item 77: Report of the International Law Commission on the work of its seventy-third session (Cluster III)

Cluster II – Immunity of state officials from foreign criminal jurisdiction and Sea-level rise in relation to international law

2 November 2022

77th Session of the United Nations General Assembly

Mr. Chair,

The Philippines is grateful to the International Law Commission for its work and commends Special Rapporteurs Mr. Pavel Sturma and 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”.

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 therefore welcome the Special Rapporteur’s listing of functions of general principles of law, as identified in the third report, *i.e.*: (a) as an independent basis for rights and obligations; (b) as a means to interpret and complement other rules of international law; and (c) as a means to ensure the coherence and consistency of the international legal system.

We thank the Special Rapporteur the careful consideration, in his third report, of the (1) **issue of transposition**; (2) general principles of law formed within the international legal system; and (3) the functions of general principles of law and their relationship with other sources of international law.

We welcome the Special Rapporteur’s re-examination of certain aspects of identification of the general principles in light of, *inter alia*, debate of the Sixth Committee at its seventy-sixth session. Our comments build on our intervention during the last session.

We share the view that the point of departure of the work of the Commission is Article 38, paragraph 1 (c) of the Statute of the International Court of Justice but it is not be limited to Statute in its consideration of this topic. The analysis of the jurisprudence of arbitral tribunals or international criminal tribunals in a report addressing general principles of law is, therefore, not irrelevant.

We support the idea of simplifying Draft Conclusion 6. We agree that recognition of a principle should take place both in *foro domestico* and within the international legal system and that for the latter, such recognition, in the context of transposition, occurs implicitly. We note the need for further elements on the matter of transposition, moving forward.

On Draft Conclusion 7 on the identification of general principles of law formed within the international legal system, in the last session, we noted that further study by the Commission on this matter may be more prudent. We note the Special Rapporteur's reiteration that there is sufficient practice and doctrine to substantiate a draft conclusion on the second category. We look forward to the formulation of a clear and precise methodology for the identification general principles under this second category to help ensure that it is not confused with other source of international law, including customary law.

On Draft Conclusion 10 on the absence of hierarchy between the sources of international law), the Philippines wishes to express its reservation, noting that there is informal hierarchy in practice, as noted in the report. We would be interested in information on whether state practice supports according general principles the same status as a treaty or a rule of customary international law. We would be interested to see further elaboration on the dynamic among Draft Conclusions 10, 11, 12, and 13.

Finally, we note that indeed, as the Special Rapporteur noted, the main issue before the Commission is to establish clear criteria to determine that a principle in *foro domestico* is transposed to the international legal system. Thus, we do not see that a non-exhaustive list of general principles as a necessary annex. However, in the commentary, there may be value in including some general principles chosen on the basis of criteria indicated.

Thank you.