

STATEMENT OF THE REPUBLIC OF THE PHILIPPINES

**delivered by
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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 Constitution.¹ Our jurisprudence clarifies 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.²

Philippine jurisprudence³ also 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.

That being said, the Philippines believes that the ILC 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 suggestion to come up with an illustrative list of general principles, we are concerned that this exercise may dilute – rather than clarify – the matter. Although we would caution against such an effort at this stage, which could distract us from the core issues, we would consider submitting an illustrative list at a later stage as part of the commentaries.

On the proposed future programme of work, the Philippines supports the study on the functions of general principles of law and their relationship with other sources of international law, including the issue of hierarchy and whether general principles of law are supplementary in nature. Examination of its relationship with customary international law is needed to avoid confusion between them and provide clarity with respect to these two sources of international law.

However, we do not support addressing “regional” or “bilateral” general principles of law at this time. For us, the term “general” as envisaged in Article 38 (1)(c) of the ICJ Statute contemplates application to normally all states as a whole.

Finally, on the final product of the Commission’s work on this, we support the proposal that this should be in the form of Conclusions with commentaries as the purpose for including this in the Commission’s work programme is to elucidate the concept of general principles of law as a source of international law and to examine state practice on it. Thank you.