



SIXTH COMMITTEE

CHECK AGAINST DELIVERY

Statement by

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ILC Cluster III

Chps: VII (Succession of States in respect of State responsibility) and VIII (General principles of law)

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Madame Chair,

Starting with the topic “**General principles of law**”, Israel would like to thank the Special Rapporteur for his first two reports, which provided useful information about this source of international law.

Regarding the issue of the relationship between different sources of international law, Israel

Concerning the term “other relevant materials” proposed in connection with Draft Conclusion 5(3), Israel believes that this term is too vague, and might give way to overly broad interpretation. Israel suggests that the said draft conclusion, or the commentary thereto, clarify what the term “other relevant materials” may include. In any case, this category should include only materials that clearly represent the authoritative legal view of the relevant State.

Madame Chair,

With regard to Draft Conclusion 3(b) and the proposed category of general principles of law that may have developed within the international legal system, Israel strongly believes that there is insufficient State practice to suggest or to demonstrate the existence of such a category. The Special Rapporteur himself has acknowledged the dearth of State practice in this regard as well, and the Commission should take this fact into consideration. Moreover, this category does not seem to be supported also by the *travaux préparatoires* of Article 38(1)(c) of the Statute of the International Court of Justice, which discusses general principles formed within domestic legal systems.

Israel further notes in this vein that the question of the existence of such a category is the subject of significant disagreement among Member States and even within the Commission itself. In Israel’s view, the very fact that there is significant divergence amongst States concerning the very existence of such a putative source of international law - 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 so-called ‘second category’ as a source of international law.

Madame Chair,

The inherent problems associated with the suggested cat

Furthermore, it is worth noting that customary rules do not necessarily apply universally. This is particularly true in situations where there is a persistent objector to a certain rule. In this context, Israel recalls that the persistent objector is a well-established concept in international law, and is recognized by the Commission itself in the context of its work on the topics of “Identification of customary international law” and “Peremptory norms of general international law (*jus cogens*)”. Draft Article 7(b) could be read to suggest that a general principle may be deduced from customary rules, potentially circumventing -- in an unacceptable manner-- the persistent objector rule. This issue raises an important question, which the Commission should explore, of whether general principles of international law apply to States that have expressly rejected them.

With regard to the third criterion in Draft Conclusion 7(c), which refers to principles inherent in the basic features and fundamental requirements of the international legal system, Israel believes that this notion is extremely vague and subjective, and lacks a basis in State practice accepted as

Madame Chairperson,

Turning now to the topic of "**Succession of States in respect of State Responsibility**"

With respect to the final outcome, Israel does not see the proposed draft articles as appropriate for serving as a basis of a future convention. In this vein, we respectfully suggest that the current form of draft guidelines may be more appropriate in this particular context.

Madame Chair,

As a concluding remark, Israel would like to acknowledge that the choice of the proper topics for the ILC to take up is a responsibility shared by both the Commission and States. Therefore, Israel believes that it is important that as many States as possible voice their positions on this matter, and on the Commission's work more generally, in order to provide appropriate guidance to the Commission and ensure that the outcome will best serve States at the end of the day.

I thank you Madame Chair