

General Assembly  
Seventy-sixth Session

Sixth Committee

1 November 2021

Agenda item 82:  
Report of the International Law Commission on  
the work of its seventy-second session

Mme./Mr. Chair,

At the outset, I would like to thank the International Law Commission for their report.

I have the honor to deliver this statement on behalf of Iceland, Finland, Norway, Sweden - and my own country - Denmark.

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Mme./Mr. Chair,

Regarding the topic of Succession of States in respect of states responsibility, the Nordic countries would like to thank the Special Rapporteur Pavel Šturma for his interesting and well-



Overall, the Nordic countries subscribe to the general approach and preliminary conclusions 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 coupled with the cross-cutting nature of this issue.

During this session the Commission provisionally adopted draft conclusions 1, 2 and 4 with commentaries and took note of draft conclusion 5. We welcome this progress in the work of the Commission on this topic.

Turning to the report, the Nordic countries would like to note the following points:

First, we commend the Special Rapporteur's broad survey of relevant State practice, jurisprudence and teachings. It is imperative that the report is sufficiently anchored in the most relevant sources of international law.

Second, while article 38(1)c of the Statute of the International Court of Justice provides an obvious starting point, it does contain the unfortunate reference to recognition by "civilized nations". The Nordic countries should like to reiterate that is an anachronistic and inappropriate term and should not be incorporated into the Commission's conclusions. We are amenable to the proposed wording "community of nations" in draft conclusion 2 but would prefer "international community of States" as it seems clearer and more in line with standard terminology.

Third, while there is no doubt that the category of general principles of law constitute a primary source of international law, alongside treaties and customary international law, general principles of law usually 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. The criteria for identifying general principles of law must thus be sufficiently strict to avoid exaggerating the legal significance of this particular source of law in relation to the other primary sources of international law.

The Nordic countries agree with the two-step approach to the identification of general principles derived from national legal systems, enshrined in draft conclusion 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 level.

Fourth, we agree that general principles of law can emanate also from the international legal system, as highlighted by draft conclusion 7. Delineating such principles from customary international law will require careful consideration and rigorous analysis. We broadly agree with the three approaches to determine the existence and content of a general principle of law formed within the international legal system, as enshrined in draft conclusion 7 a), b) and c). We appreciate the Commission's detailed discussion of this category and welcome the Special Rapporteur's intention to advance this work.

Finally, we support the proposed outcome of this process, namely draft conclusions accompanied by commentaries.

