



Statement
on behalf of the Republic of South Africa
by
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before the Sixth Committee of the 77th Session
of the United Nations General Assembly

Under Cluster 3
“Succession of States in respect of States
Responsibility & General Principles of Law”

New York
2 November 2022

Chairperson

We welcome the adoption of the proposed draft conclusions by the Commission and will address some of the draft conclusions. We welcome the use of the phrase “may be formed” from draft conclusion 3 as appropriate to allow for a degree of flexibility to the provision. With respect to draft conclusion 6, we support the view of some members that the Commission should aim at ensuring a text that avoids creating the impression that transposition to the international legal system is either automatic or that it requires a formal act.

Chairperson

We note the views expressed by some members that general principles of law are used primarily as "gap fillers" when treaties or customary international law does not provide a rule of decision. However, we support the view expressed by some members that the general principles of law do not have a monopoly on filling the gaps in the international legal system. As suggested by scholars that as new treaties and customary law develop to address areas of international concern, the significance of general principles will fade as these gaps in international law are filled and as a result the general principles should not have this monopoly. We also note that the report does not provide an explanation on how the gap-filling role would apply if the Commission concluded that two different categories of general principles existed.

In conclusion Chairperson

We have taken note that the Draft conclusion 7 (identification of general principles of law formed within the international legal system) was provisionally adopted by the Commission with commentaries at the present session. We have also taken note that the Special Rapporteur referred to an alternative formulation for draft conclusion 7, to be considered by the Drafting Committee, seeking to find a common ground in light of the comments made by members in the plenary debate.

I thank you for your attention.