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General principles of law

Consolidated text of draft conclusions 1 to 11 provisionally adopted by the Drafting Committee

Draft conclusion 1

Scope

The present draft conclusions concern general principles of law as a source of international law.

Draft conclusion 2

Recognition

For a general principle of law to exist, it must be recognized by the community of nations.

Draft conclusion 3

Categories of general principles of law

General principles of law comprise those:

- (a) that are derived from national legal systems;
- (b) that may be formed within the international legal system.

Draft conclusion 4

Identification of general principles of law derived from national legal systems

To determine the existence and content of a general principle of law derived from national legal systems, it is necessary to ascertain:

- (a) the existence of a principle common to the various legal systems of the world;
and
- (b) its transposition to the international legal system.

Draft conclusion 5

Determination of the existence of a principle common to the various legal systems of the world

1. To determine the existence of a principle common to the various legal systems of the world, a comparative analysis of national legal systems is required.
2. The comparative analysis must be wide and representative, including the different regions of the world.



3. The comparative analysis includes an assessment of national laws and decisions of national courts, and other relevant materials.

Draft conclusion 6**Determination of transposition to the international legal system**

A principle common to the various legal systems of the world may be transposed to the international legal system in so far as it is compatible with that system.

Draft conclusion 7**Identification of general principles of law formed within the international legal system**

1. To determine the existence and content of a general principle of law that may be formed within the international legal system, it is necessary to ascertain that the community of nations has recognised the principle as intrinsic to the international legal system.
2. Paragraph 1 is without prejudice to the question of the possible existence of other general principles of law formed within the international legal system.

Draft conclusion 8**Decisions of courts and tribunals**

1. Decisions of international courts and tribunals, in particular of the International Court of Justice, concerning the existence and content of general principles of law are a subsidiary means for the determination of such principles.
2. Regard may be had, as appropriate, to decisions of national courts concerning the existence and content of general principles of law, as a subsidiary means for the determination of such principles.

Draft conclusion 9**Teachings**

Teachings of the most highly qualified publicists of the various nations may serve as a subsidiary means for the determination of general principles of law.

Draft conclusion 10**Functions of general principles of law**

1. General principles of law are mainly resorted to when other rules of international law do not resolve a particular issue in whole or in part.
2. General principles of law contribute to the coherence of the international legal system. They may serve, *inter alia*:
 - (a) to interpret and complement other rules of international law;
 - (b) as a basis for primary rights and obligations, as well as a basis for secondary and procedural rules.

Draft conclusion 11**Relationship between general principles of law and treaties and customary international law**

1. General principles of law, as a source of international law, are not in a hierarchical relationship with treaties and customary international law.
2. A general principle of law may exist in parallel with a rule of the same or similar content in a treaty or customary international law.
3. Any conflict between a general principle of law and a rule in a treaty or customary international law is to be resolved by applying the generally accepted techniques of interpretation and conflict resolution in international law.