

INTERNATIONAL LAW COMMISSION

Seventy-first session

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Check against delivery

General principles of law

Statement of the Chair of the Drafting Committee

Mr. Claudio Grossman Guiloff

7 August 2019

Mr. Chair,

It is my pleasure to introduce the seventh and final report of the Drafting Committee for the seventy-first session of the International Law Commission, concerning the topic “General principles of law”. This is an interim oral report, presented to the Commission for informative purposes only.

Before commencing, allow me to pay tribute to the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, whose mastery of the subject, guidance, and cooperation greatly facilitated the work of the Drafting Committee. I also thank the other Members of the Committee for their active participation and significant contributions. Furthermore, I wish to thank the Secretariat for its invaluable assistance. As always, and on behalf of the Drafting Committee, I am pleased to extend my appreciation to the interpreters.

Mr. Chair,

The Drafting Committee devoted one meeting to this topic on 30 July 2019, for the consideration of draft conclusions 1, 2, and 3, proposed by the Special Rapporteur in his first report (A/CN.4/732) and referred to the Drafting Committee by the Commission at the conclusion of the Plenary debates. The Drafting Committee provisionally adopted one draft conclusion. Due to a lack of time, the Drafting Committee could not consider the two other draft conclusions referred by the Plenary and will thus resume their consideration at the next session.

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Mr. Chair,

Let me turn to draft conclusion 1.

Draft conclusion 1 - Scope

Draft conclusion 1 is entitled “Scope”, as proposed by the Special Rapporteur in his first report. It reads as follows:

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

The text proposed by the Special Rapporteur in his first report has been provisionally adopted by the Drafting Committee without any changes.

This draft conclusion reflects the Commission’s aim to complete its work on the sources of international law listed in Article 38, paragraph 1, of the Statute of the International Court of Justice, further to its contributions regarding the other two main sources of international law, namely treaties and customary international law. Although a view was expressed that the term “source” was unclear and should be avoided, Members of the Drafting Committee generally considered that it is appropriate to refer explicitly to this term given that the purpose of the topic was precisely to clarify various aspects of the third source of international law listed in Article 38, paragraph 1, including its relationship with the other sources. It was acknowledged, nonetheless, that different views existed regarding the term “source” and that this could be addressed in the commentary.

It was also agreed by Members of the Drafting Committee that the term “general principles of law” was to be understood in the sense of Article 38, paragraph 1 (c), of the Statute of the

International Court of Justice, taking into account the practice of States as well as the jurisprudence of international courts and tribunals. In this context, it was also understood that, in the course of its consideration of the topic, the Commission should not restrict itself to only the study of this source as used by the International Court of Justice. Further, Members of the Drafting Committee agreed with the Special Rapporteur that the Commission should provide examples of general principles of law in the commentaries to the draft conclusions for illustration only and that the Commission should not delve into the substance of specific general principles of law.

An extensive debate took place among Members of the Committee as to whether draft conclusion 1 should be more detailed. In this regard, it was suggested that the text of draft conclusion 1 refer, for example, to the nature, scope, functions, and identification of general principles of law. Members of the Drafting Committee concluded that a general provision, as proposed by the Special Rapporteur, would be more appropriate for several reasons. First, it would have the benefit of indicating in a simple and concise manner the scope and purpose of the topic. Second, Members were concerned that including a more detailed provision could unnecessarily limit the scope of the Commission's work on the topic.

The Special Rapporteur indicated that the various proposals made by Members of the Committee reflect the broad consensus that emerged during the plenary debate regarding the issues to be considered by the Commission in future reports. In this sense, it was understood in the Drafting Committee that it would be useful to refer to those issues in the commentary, including the legal nature of general principles of law as a source of international law, the origins of general principles of law, their functions, the relationship between general principles of law and other sources of international law, and the method for identifying general principles of law.

Finally, a debate took place as to the terminology to be used in the Spanish and French versions to refer to general principles of law. In particular, some Members indicated that it would be more appropriate to follow the exact language of Article 38, paragraph 1 (c), of the Statute of the International Court of Justice, which refers to “principios generales de derecho” in Spanish and to “principes généraux de droit” in French. These Members stressed that, since Article 38 was the starting point of the topic, it would be appropriate to use the language of the Statute. Further, it was mentioned that the terminology was not a mere technical issue. It was noted, however, that the expressions “*del derecho*” and “*du droit*” have been used in international practice, in recent

instruments such as the Rome Statute of the International Criminal Court, by the Commission itself in its recent work, including in the topic identification of customary international law, as well as in the literature. It was also stressed that the current title of the topic in Spanish and French had not been the subject of observations by States at the Sixth Committee and is contained in the relevant resolutions. It was agreed by Members of the Drafting Committee that the term used in these two languages in the Special Rapporteur's report should not be interpreted as changing the meaning of Article 38 of the Statute. At this stage, Members of the Drafting Committee concluded that it would be cautious to provisionally adopt the text of draft conclusion 1 in English only and to continue the debate on this aspect later.

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Mr. Chair,

This concludes my introduction of the interim oral report of the Drafting Committee for the seventy-first session.

Thank you, Mr. Chair.
