



# AUSTRALIA



AUSTRALIAN MISSION TO THE UNITED NATIONS

E-mail [australia@un.int](mailto:australia@un.int)

150 East 42<sup>nd</sup> Street, New York NY 10017-5612 Ph 212 - 351 6600 Fax 212 - 351 6610 [www.australia-unsc.gov.au](http://www.australia-unsc.gov.au)

## **UNITED NATIONS GENERAL ASSEMBLY SIXTH COMMITTEE: INTERNATIONAL LAW COMMISSION CLUSTER III**

1 November 2021

### **Statement by Australia**

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Thank you Madam Chair,

Australia would like to make some remarks today on the International Law Commission's work on General Principles of Law.

Australia welcomes the comprehensive examination the Commission is undertaking on this important topic.

We thank the Special Rapporteur, Mr Marcelo Vázquez-Bermúdez, for his Second Report. It provides an insightful analysis and further details regarding the proposed 'two-step analysis' for the identification of a general principle of law derived from national legal systems.

We commend the Special Rapporteur for his thorough survey of relevant State practice, jurisprudence and teachings.

As an overarching comment, Australia invites the Commission to clarify how the terminology used in the draft conclusions interacts with the draft conclusions on the identification of customary international law.

For example, draft conclusion 5(2) requires that to identify a general principle of law, a comparative analysis must be 'wide and representative'. This is similar to the requirement in the draft conclusions on customary international law that State practice must be 'widespread and representative'.

In our view, it would be helpful if consistent terms were used across the two sets of draft conclusions where appropriate. Otherwise, where the Commission intentionally adopts different language, Australia recommends the commentaries clearly explain the different terminology used.

Australia welcomes the outline in the Second Report on how to identify that a principle has been 'transposed' to the international legal system.

Australia recommends the Commission provides further clarification on what constitutes 'fundamental principles of international law' with which a principle must be compatible in order to be 'transposed' to the international legal system.

A definition of terms would also enhance the draft conclusions, including a definition of 'fundamental principles of international law' as well as 'conventional international law'.

In relation to general principles formed in the international legal system, Australia welcomes the clarification in the Second Report on how a general principle in this category would be identified and how its identification differs from the identification of customary international law.

Given the limited practice on general principles formed in the international legal system, Australia's view is that the Commission should be clear which aspects of the draft conclusions represent the codification of existing international law, and which parts represent the progressive development of international law.

Australia invites the Commission to further clarify how general principles of law derived from the international legal system can be distinguished from other sources of international law, such as customary international law or treaties.

In this regard, Australia welcomes the inclusion in the Commission's next programme of work the relationship between general principles of law and other sources of international law.

Australia also supports the Commission's future work on the functions of general principles of law, in particular to clarify the 'gap-filling' role often ascribed to general principles of law, as demonstrated by State practice and decisions of international courts and tribunals.

Australia commends the progress made by the Special Rapporteur and the Commission and looks forward to the Commission's ongoing work on this topic.

Thank you.