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(1) UN INTERNATIONAL LAW COMMISSION

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UN INTERNATIONAL LAW COMMISSION

1. The Drafting Committee of the UN ILC provisionally adopts the draft conclusions 1 to 3 on the topic '*Subsidiary means for the determination of rules of international law*'.

Draft Conclusion 1 (Scope)

The present draft conclusions concern the use of subsidiary means for the determination of rules of international law.

Draft Conclusion 2 (Categories of subsidiary means for the determination of rules of international law)

Subsidiary means for the determination of rules of international law include:

- (a) decisions of courts and tribunals;
- (b) teachings;
- (c) any other means generally used to assist in determining rules of international law.

Draft Conclusion 3 (General criteria for the assessment of subsidiary means for the determination of rules of international law)

When assessing the weight of subsidiary means for the determination of rules of international law, regard should be had to, *inter alia*:

- (a) their degree of representativeness;
- (b) the quality of reasoning;
- (c) the expertise of those involved;
- (d) the level of agreement among those involved;
- (e) the reception by States and other entities;
- (f) where applicable, the mandate conferred on the body.

Composition of the Drafting Committee

Chair: Mr. Mārtinš Paparinskis

Special Rapporteur: Mr. Charles Chernor Jalloh

Members (25): Mr. Dapo Akande, Mr. Carlos J. Argüello Gómez, Mr. Masahiko Asada, Mr. Ahmed Amin Fathalla, Mr. Rolf Einar Fife, Mr. Mathias Forteau, Mr. George Rodrigo Bandeira Galindo, Ms. Patricia Galvão Teles, Mr. Huikang Huang, Mr. Keun-Gwan Lee,

Ms. Vilawan Mangklatanakul, Mr. Andreas D. Mavroyiannis, Mr. Ivon Mingashang, Mr. Giuseppe Nesi, Ms. Phoebe Okowa, Mr. Mario Oyarzábal, Mr. Bimal N. Patel, Mr. August Reinisch, Ms. Penelope Ridings, Mr. Juan José Ruda Santolaria, Mr. Alioune Sall, Mr. Louis Savadogo, Mr. Marcelo Vázquez-Bermúdez, Mr. Evgeny Zagaynov and Mr. Hong Thao Nguyen (*ex officio*)

2. The Drafting Committee of the UN ILC provisionally adopts the draft articles 1 to 3 on the topic '*Prevention and repression of piracy and armed robbery at sea*'. ([Document A.CN.4/L.984](#))

Draft Article 1 (Scope)

The present draft articles apply to the prevention and repression of piracy and armed robbery at sea.

Draft Article 2 (Definition of piracy)

1. Piracy consists of any of the following acts:
 - (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
 - (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
 - (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).
2. Paragraph 1 shall be read in conjunction with the provisions of article 58, paragraph 2, of the United Nations Convention on the Law of the Sea.

Draft Article 3 (Definition of armed robbery at sea)

Armed robbery against ships consists of any of the following:

- (a) any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against

persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea;

(b) any act of inciting or of intentionally facilitating an act described in subparagraph (a);

Composition of the Drafting Committee

Chair: Mr. Mārtiņš Pāparinskis

Special Rapporteur: Mr. Yacouba Cissé

Members (21): Mr. Dapo Akande, Mr. Masahiko Asada, Mr. Ahmed Amin Fathalla, Mr. Rolf Einar Fife, Mr. George Rodrigo Bandeira Galindo, Mr. Claudio Grossman Guiloff, Mr. Huikang Huang, Mr. Charles Chernor Jalloh, Mr. Keun-Gwan Lee, Mr. Andreas D. Mavroyiannis, Mr. Ivon Mingashang, Mr. Giuseppe Nesi, Ms. Nilüfer Oral, Mr. Hassan Ouazzani Chahdi, Mr. Mario Oyarzábal, Mr. Bimal N. Patel, Mr. August Reinisch, Ms. Penelope Ridings, Mr. Juan José Ruda Santolaria, Mr. Louis Savadogo and Mr. Hong Thao Nguyen (*ex officio*).

3. The Drafting Committee of the UN ILC provisionally adopts the draft guidelines 1 and 2 on the topic '*Settlement of international disputes to which international organizations are parties*'. ([Document A/CN.4/L.983](#))

Draft Guideline 1 (Scope)

The present draft guidelines concern the settlement of disputes to which international organizations are parties.

Draft Guideline 2 (Use of terms)

For the purposes of the present draft guidelines:

- (a) "International Organizations" means an entity possessing its own international legal personality, established by a treaty or other instrument governed by international law, that may include as members, in addition to States, other entities, and has at least one organ capable of expressing a will distinct from that of its members.
- (b) "Dispute" means a disagreement concerning a point of law or fact in which a claim or assertion is met with refusal or denial.
- (c) "Means of dispute settlement" refers to negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of resolving disputes.

Composition of the Drafting Committee

Chair: Mr. Mārtiņš Pāparinskis

Special Rapporteur: Mr. August Reinisch

Members (21): Mr. Dapo Akande, Mr. Masahiko Asada, Mr. Ahmed Amin Fathalla, Mr. Rolf Einar Fife, Mr. Mathias Forteau, Mr. George Rodrigo Bandeira Galindo, Ms. Patricia Galvão Teles, Mr. Claudio Grossman Guiloff, Mr. Huikang Huang, Mr. Charles Chernor Jalloh, Mr. Keun-Gwan Lee, Ms. Vilawan Mangklatanakul, Mr. Andreas D. Mavroyiannis, Mr. Ivon Mingashang, Mr. Giuseppe Nesi, Ms. Phoebe Okowa, Ms. Nilüfer Oral, Mr. Hassan Ouazzani Chahdi, Mr. Mario Oyarzábal, Mr. Bimal N. Patel, Ms. Penelope Ridings, Mr. Juan José Ruda Santolaria, Mr. Alioune Sall, Mr. Louis Savadogo and Mr. Hong Thao Nguyen (*ex officio*).

4. The Drafting Committee provisionally adopts the draft conclusions 1 to 11 on the topic '*General principles of law*' on first reading. ([Document A/CN.4/L.982](#))

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 the decisions of national courts concerning the existence and content of general principles of law are 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.

Composition of the Drafting Committee

Chair: Mr. Mārtiņš Pāparinskis

Special Rapporteur: Mr. Marcelo Vázquez-Bermúdez

Members (27): Mr. Dapo Akande, Mr. Carlos J. Argüello Gómez, Mr. Masahiko Asada, Mr. Rolf Einar Fife, Mr. Mathias Forteau, Mr. George Rodrigo Bandeira Galindo, Ms. Patricia Galvão Teles, Mr. Claudio Grossman Guiloff, Mr. Huikang Huang, Mr. Charles Chernor Jalloh, Mr. Keun-Gwan Lee, Ms. Vilawan Mangklatanakul, Mr. Andreas D. Mavroyiannis, Mr. Ivon Mingashang, Mr. Giuseppe Nesi, Ms. Phoebe Okowa, Ms. Nilüfer Oral, Mr. Hassan Ouazzani Chahdi, Mr. Mario Oyarzábal, Mr. Bimal N. Patel, Mr. August Reinisch, Ms. Penelope Ridings, Mr. Juan José Ruda Santolaria, Mr. Alioune Sall, Mr. Louis Savadogo, Mr. Munkh-Orgil Tsend and Mr. Hong Thao Nguyen (*ex officio*).

5. On the topic '*Immunity of State officials from foreign criminal jurisdiction*', the Commission on 10th May 2023, appointed Mr. Claudio Grossman Guiloff as the new Special Rapporteur. The topic was included in its programme of work by the ILC at its 59th Session

in 2007 and has previously seen the appointments of Mr. Roman A. Kolodkin and Ms. Concepción Escobar Hernández as its Special Rapporteurs.

6. On the topic ‘Succession of States in respect of State responsibility’, the Commission on 10 May 2023, formed a Working Group and appointed Mr. August Reinisch as its Chair. The topic was included in its programme of work by the ILC in 2017 at its 69th Session, and had appointed Mr. Pavel Šturma as Special Rapporteur for the topic.
7. As the ILC concludes its first part of the 74th Session on 2 June 2023, Ms. Patrícia Galvão Teles is handed over the position of Chair for the second part of the Session, by Ms. Nilufer Oral.



*The cherishable linguistic showdown fueled by coffee over ‘au’ and ‘du’ in the French text of Draft Article 1!
Moments from the coffee break during the drafting committee on piracy and armed robbery.*



Group photograph of the dedicated research assistants alongside Members of the Commission and Secretariat.

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