

**Statement on behalf of the European Union**

**By**

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**at the**

Mr. President,

I have the honour to

The EU has carefully reviewed the detailed reports of the Special Rapporteur, the 11 draft conclusions and the commentaries to them as adopted by the ILC on first reading. It is noted that they primarily build on the practice of States and international courts. Whilst the Special Rapporteur also announced the possibility to analyze the practice of international organizations

, the reference to the EU practice has remained limited for the time being

The European Union considers that its practice is indeed relevant for this exercise. It agrees with the Special Rapporteur that EU practice, which builds on and reflects the legal traditions of twenty-seven European States, may be an important reference point when identifying principles recognized by the community of nations.

It could therefore be useful to analyze the comparative methodology used by the Court of Justice of the EU under Article 340 TFEU, but not only, in identifying principles of the process of identifying general principles of law, the EU practice could serve as a reference to determine how the methods of comparative law should be used in this context, in particular when an international judicial body is faced with the task of identifying general principles of international law.

In the same vein, the EU would like to draw the attention to Article 6(3) of the Treaty on European Union, which states

*constitutional traditions common to the member States, shall*

This illustrates that in the EU legal order, general principles that emanate from the legal systems of its Member States also constitute principles of EU law and constitute an autonomous source of law. This may inform the debate in the ILC about the existence of general principles of law originating in the international legal system.

Mr. President,

Before concluding, the EU would like to make some specific remarks on some of the draft conclusions and the commentaries to them.

The European Union notes that the **draft conclusion 2** refers to the recognition of the general principle of law by the

<i>community of nations</i>	draft
c	<i>community of</i>
<i>nations</i>	<i>civilized nations</i>

38 paragraph 1 c) of the Statute of the International Court of Justice. While the European Union can agree that the term *civilized nations*

Court of Justice may appear anachronistic, it considers that *community of nations*

reflect the role which is played by international organisations as subjects of the international law. The European Union notes that, according to the point 5 of the commentary to the Conclusion 2, the use of th *community of nations*

*in certain circumstances*

organisations may also contribute to the formation of the general principles of law. The commentary does not provide for further guidance in relation to the circumstances in which the international organisations could contribute to the existence of the general principles of law. As mentioned above, the EU recognizes general principles of law as an autonomous part of its legal order. In that sense, this specificity may serve as an illustration of an international organisation contributing to the formation of general principles of law. The European Union would thus welcome further reflections on the role of the international

organisations in the creation of the general principles of law  
*the*  
*international community*

The European Union welcomes that **draft conclusion 4**

meaning that the principle derived from national legal systems is susceptible to be transposed in the international legal system.

The European Union observes that **draft conclusions 4 and 5** require that the principles derived from national legal *common to the various legal systems of the word*

fact that the principle must be common to the legal systems which are as numerous and as representative as possible. For this reason, the European Union would welcome further clarification in this regard in the commentary.

The EU welcomes that the ILC has clarified that the term *international courts and tribunals*

*powers that is called upon to consider general principles of*

(paragraph 7 of the commentaries to **draft conclusion 8**). The decisions of the Court of Justice of the European Union should undoubtedly be considered as subsidiary means for the determination of general principles of law and





The European Union will consider sharing with the International Law Commission additional observations in writing, information and material to be used during the further consideration of this topic, in order to continue contributing to the development of international law.

I thank you.





