

General Principles as Systemic Elements of International Law

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General Principles as Systemic Elements of International Law

Ten Propositions

1. An international legal system exists. That is, international law consists of a body of rules united by a relationship of validity and operating against a backdrop of principles that give expression to the system's underlying values.
2. General principles of law, as reflected in Article 38(1)(c) ICJ Statute, are embedded in the foundational processes of this system. As such, addressing persistent questions on general principles requires engagement with the nature and operation of the system itself.
3. There is a fundamental distinction between rules and principles. This difference is one of kind, not simply of degree.
4. Despite their label, general principles of law are international legal rules. They are definitive commands that necessitate a particular outcome upon the fulfilment of one or more conditions.
5. General principles of law are a distinct and autonomous category of rules. They are independent from other categories of rules, such as those found in treaties or customary law, and are separate from principles in the true sense of the term.
6. As rules, the ascertainment of a general principle is grounded in the fulfilment of conditions set out in another rule of the system: a rule of validity. The rule of validity for general principles requires "general recognition of an international rule by systemic officials".
7. This rule reflects the reality of how general principles come into existence: they are products of a process of contestation and confirmation by a range of actors, with a particularly prominent role for courts and tribunals.
8. General principles of law tend to develop as secondary rules: those rules that regulate the development, modification, termination, and application of other rules. This development typically occurs in the absence of applicable treaties and customary law.
9. There is scope for a more innovative reliance on general principles, including as primary rules that would extend the scope of application of international law.
10. Be cautious of seemingly authoritative Latin maxims, or, expressed as a general principle:
Verba multa lingua in latina scripta non legenda sunt.