

*Przemysław Saganek\**

## GENERAL PRINCIPLES OF LAW IN PUBLIC INTERNATIONAL LAW\*\*

### Abstract:

*This article discusses the classical question whether general principles of law form a separate source of international law. To this end it adopts the method of a posteriori analysis, examining the normative nature of various principles of law one by one. This analysis leads to the conclusion that only some principles have a normative nature, while others lack it.*

**Keywords:** general principle of law, general principle of international law, ICJ Statute

### INTRODUCTORY REMARKS

General principles of law remain the most mysterious element discussed in the context of sources of international law. Even their very name may give rise to some doubts. One can wonder whether to call them “general principles” as such, “general principles of law”, “general principles of municipal law applied to interstate matters”, or maybe “general principles of international law.” One can have the feeling that this terminological choice predetermines the results to a high (possibly too high) extent.

There is no doubt that general principles of law have, or at least can have, an important role in international jurisprudence. There is also no doubt that they may be very useful for advocates of the parties, allowing them to construct arguments which may sometimes be very rational and sometimes very bold. This practical importance should be noted with some suspicion, however. Objectively, it can mean the readiness of at least some courts or arbitrators to pronounce on obligations of states which find support neither in their treaty obligations nor in established norms of customary law. It brings to the fore the question of state sovereignty and its influence on the catalogue of sources of international law. While the need to respect the former was the main

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\* Dr. habil., Associate professor, Institute of Law Studies of the Polish Academy of Sciences, Warsaw (Poland), email: psaganek@yahoo.com.

\*\* The present text refers to the conclusions and ideas presented by the author in two texts: *The theoretical problem of sources of international law* (to be published in the Memorial Book for Prof. K. Wolfke) and *Ogólne zasady prawa w prawie międzynarodowym* (to be published in Festschrift for Judge T. Szymanek).

stimulating factor for the present text, it is within the context of the latter that the main arguments are going to be discussed. The major underlying question is whether general principles of law form a separate source of international law.

The answer will be sought on two planes. The first is supplied by the doctrine dealing with sources of international law in general, or with general principles of law in particular. It could be called an *a priori* analysis. It will be confronted by the second approach, which can be called an *a posteriori* analysis. The latter consists of examining a series of principles, one by one, in order to analyse their possible presence, or absence, in the framework of public international law. An additional tool, called the “zero-extra” test, is also explained and discussed in the article.

## 1. THE POSITION OF GENERAL PRINCIPLES OF LAW IN THE SCHOLARSHIP ON SOURCES OF PUBLIC INTERNATIONAL LAW

It is natural for international lawyers trying to grasp the topic of general principles to take Article 38(1)(c) of the Statute of the International Court of Justice (ICJ Statute) as a point of departure. This provision provides that: “1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (...) c. the general principles of law recognized by civilized nations.”

While it is difficult to overestimate the importance of this provision for the functioning of the World Court,<sup>1</sup> its influence on the theory of international law is much more difficult to assess. One can have problems even with comparing the views of several authors writing about general principles of law. The reason for this is that for some authors this term is limited just to the elements referred to in Article 38(1)(c) of the ICJ Statute, while for the others it could be a notion autonomous from this provision, or even read in opposition to it.

There is no doubt that the most important aspect of the topic is the question whether general principles of law form a separate source of international law. One should agree with A. Verdross, who writes that the problem of the general principles of law cannot be solved without solution of the problem of the sources of international law.<sup>2</sup>

Let us treat as a point of departure the stance on the topic presented by the doctrine of legal positivism. It limited the number of sources of international law to two elements, namely treaty and custom.<sup>3</sup> These elements reflected two modes of expression of states’

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<sup>1</sup> Actually, it is based on Article 38(1)(c) of the Statute of the Permanent Court of International Justice (PCIJ Statute). This explains the reference to “civilized nations”, which would nowadays might encounter problems both from the perspective of political correctness and the principle of the sovereign equality of states.

<sup>2</sup> A. Verdross, *Règles générales du droit international de la paix*, Collected Courses of the Hague Academy of International Law, vol. 30, Brill Nijhoff, Leiden, Boston: 1929, p. 195.

<sup>3</sup> See e.g. F. Despagnet, *Cours de droit international public*, Librairie de la Société du Recueil Sirey, Paris: 1910, p. 69.

consent for international norms – either express (by treaties) or tacit (by custom). Sometimes this led to treating custom as a tacit treaty.<sup>4</sup> Such an attitude left no space for general principles of law. The latter could be seen rather as elements of the law of nature – a notion openly negated by legal positivism.

On the other hand, the very emergence of Article 38(1)(c) of the PCIJ Statute could be seen as a denial of legal positivism. For example, L. Oppenheim took the position that Article 38(3) meant an express recognition by States of “the existence of a third source of International Law independent of, although merely supplementary to, custom and treaty.”<sup>5</sup> He associated these principles with the practice of international arbitration before the establishment of the Court. In his opinion, “the formal incorporation of that practice in the Statute of the Court marks the explicit abandonment of the positivist view (...). It equally signifies the rejection of the naturalist attitude, according to which the law of nature is the primary source of the law of nations.”<sup>6</sup>

This explains why he chose the term “supplementary source” for general principles of law. This term was also used (though unfortunately not explained) by P. Cahier.<sup>7</sup> Interestingly enough, contemporary editors of the work of Oppenheim have not retained the very term “supplementary source.”<sup>8</sup> This is due to the wording adopted by Article 38(1)(c) of the ICJ Statute. A. Cassese lists “general principles of law recognized by the community of nations” among primary sources.<sup>9</sup>

What is often analysed however is Article 38 in and of itself, and not necessarily the nature of the elements mentioned in it. In this sense general principles are believed to be a source of law because they are listed in Article 38(1). For example, K. Zemanek seems to attach a decisive and positive role to the words “whose function it is to decide in accordance with international law.” In his opinion, this puts an end to the dispute whether Article 38 refers to sources of law.<sup>10</sup> It is manifest that the longer is the catalogue of sources adopted, the greater is chance that general principles will be included within it.<sup>11</sup>

<sup>4</sup> P. Heilborn, *Les sources du droit international*, Collected Courses of the Hague Academy of International Law, vol. 11, Brill Nijhoff, Leiden, Boston: 1926, p. 19.

<sup>5</sup> L. Oppenheim, *International Law: A Treatise. Vol. I – Peace* (8<sup>th</sup> ed.), H. Lauterpacht (ed.), Longmans, Green and Co., London, New York, Toronto: 1955, p. 30.

<sup>6</sup> *Ibidem*, p. 30.

<sup>7</sup> P. Cahier, *Changements et continuité du droit international. Cours général de droit international public*, Collected Courses of the Hague Academy of International Law, vol. 195, Brill Nijhoff, Leiden, Boston: 1985, p. 222.

<sup>8</sup> R. Jennings, A. Watts, *Oppenheim's International Law. Vol. 1: Peace* (9<sup>th</sup> ed.), Oxford University Press, Oxford, New York: 1996, p. 40.

<sup>9</sup> A. Cassese, *International Law*, Oxford University Press, Oxford: 2005, p. 183. Along with custom, treaties and unilateral acts of states. On the other hand, secondary sources include decisions of international organizations and court decisions made *ex aequo et bono*.

<sup>10</sup> K. Zemanek, *The Legal Foundations of the International System: General Course on Public International Law*, Collected Courses of the Hague Academy of International Law, vol. 266, Brill Nijhoff, Leiden, Boston: 1997, p. 131.

<sup>11</sup> See e.g. the list adopted by A. Verdross, B. Simma, *Universelles Völkerrecht. Theorie und Praxis*, Duncker & Humblot, Berlin: 1984, p. 323.

W. Czapliński and A. Wyrozumska go as far as to write that “the doctrine of international law seems to be unanimous that art. 38 of the Statute of the ICJ is a reference to formal sources of international law.”<sup>12</sup> It goes without saying that general principles may be a hostage or even a victim, of this way of presentation.

At the same time, there is no unanimity in this respect. For example, W. Góralczyk underscores that

from the formal point of view art. 38 lists the basis or sources of decision-making by the ICJ. They may coincide with the sources of international law. All the same it must be kept in mind that art. 38 does not have to be treated as an exhaustive list of sources of international law, as well as that not all elements from art. 38 must be true sources of international law.<sup>13</sup>

R. Bierzanek and J. Symonides also stress that the bases of judgments of the ICJ should not be identified with sources of international law.<sup>14</sup> P.-M. Dupuy rightly points out the contractual character of Article 38 and criticizes attempts to give it a quasi-constitutional nature.<sup>15</sup>

Keeping this in mind, we should not be astonished when encountering much shorter lists of sources of international law. What particularly interests us here are lists in which general principles are missing. They can be found in the works of many authors.<sup>16</sup>

The decision not to include general principles in the list of sources of international law is seldom explicitly justified. This is why it is so worthwhile to trace those few justifications actually made. To some extent they may relate to the very wording of Article 38(1)(c) of the ICJ Statute. For example, S. Rosenne, when referring to Article 38(1)(c) writes “[t]hat is not an allusion to the general principles of *international* law (really part of customary law). It is broader and embraces the general principles of law recognized by the community of States as a whole.”<sup>17</sup> P.-M. Dupuy also strictly separates two elements – the general principles of law of civilized nations mentioned in Article 38(1)(c), and general principles of international law.<sup>18</sup> It should be noted that such a position does not have to predetermine the stance of a given author as to the list of types of sources of international law.

<sup>12</sup> W. Czapliński, A. Wyrozumska, *Prawo międzynarodowe publiczne. Zagadnienia systemowe* [Public international law. Systemic issues], C.H. Beck, Warszawa: 1999, p. 15.

<sup>13</sup> W. Góralczyk, *Prawo międzynarodowe publiczne w zarysie* [An outline of public international law], PWN, Warszawa: 1989, p. 63.

<sup>14</sup> R. Bierzanek, J. Symonides, *Prawo międzynarodowe publiczne* [Public international law], LexisNexis, Warszawa: 1994, p. 78.

<sup>15</sup> P.-M. Dupuy, *Droit international public*, Dalloz, Paris: 2008, p. 280.

<sup>16</sup> Bierzanek & Symonides, *supra* note 14, p. 78; Góralczyk, *supra* note 13, pp. 65-66; Ch. Rousseau, *Droit international public*, Sirey, Paris: 1970, vol. I, pp. 59-60; N. Quoc Dinh, P. Daillier, A. Pellet, *Droit international public*, LGDJ, Paris: 1994, p. 114; F. Berber, *Lehrbuch des Völkerrechts. Erster Band. Allgemeines Friedensrecht*, C.H. Beck, München und Berlin: p. 69.

<sup>17</sup> S. Rosenne, *The Perplexities of Modern International Law: General Course on Public International Law*, vol. 291, Brill Nijhoff, Leiden, Boston: 2001, pp. 47-48.

<sup>18</sup> Dupuy, *supra* note 15, pp. 356-358.

In the Polish legal literature, it was W. Góralczyk who undertook a more comprehensive explanation of the unwillingness of some scholars to treat general principles of law as a separate source of law.<sup>19</sup> He also examines, as a point of departure, the differentiation between general principles of international law and the general principles of law recognized by the community of States. In his opinion “general principles of international law can be situated within custom and treaties so art. 38(1)(c) would add nothing new to 38(1)(a) and (b).”<sup>20</sup>

It is difficult to refrain here from making a few remarks. Firstly, one can be very sympathetic to the scepticism about treating Article 38 of the ICJ Statute as an authority decisive for the number and identity of sources of international law. It is a kind of paradox, however, that such scepticism is often combined with attaching decisive importance to this Article as regards the question whether general principles are a separate source of law. There is no doubt that the establishment of the World Court was a great achievement in history. It is difficult however to treat its statute as a constitution of the World or of international law as a whole.

What is even more important is the question of how to interpret the assertion that general principles of international law can be situated within custom and treaties. This is especially doubtful with respect to treaties. There is no problem with labelling some treaty provisions as principles or rules (as provisions of fundamental importance, as provisions referring to more general patterns or clauses, or as rules as opposed to exceptions). This element is however of no importance for the question of sources of international law. All such rules and principles are just treaty provisions, binding only on the states parties and possibly those third states which expressed their consent to rights or obligations stemming from a given treaty.

On the other hand, that part of the statement which situates general principles of international law within custom (be it true or false) actually addresses the essence of the problem of unwritten international law.

## 2. THE ESSENCE OF THE PROBLEM

The question whether general principles of law are or are not sources of international law is of substantial theoretical and practical importance. If we are to confirm the status of general principles of law as an autonomous source of international law, we arrive at *two* sources of general and unwritten international law, namely: general principles and custom. We are, however, aware that a great number of lawyers accept only one such source, i.e. custom. What may be striking is that despite this fundamental difference, the pictures of international law as such, as presented by representatives of the two ways of thinking, are not so different.

<sup>19</sup> Góralczyk, *supra* note 13, p. 63.

<sup>20</sup> *Ibidem*.

In my opinion, it is advisable to examine custom and general principles of law together. In other words, treating them as a connected system may be a promising way to solve at least some problems surrounding general principles of law.

It goes without saying that the main object of concern is not the theoretical question of having a longer or shorter catalogue of sources of international law. It is much more precise and has to do with the influence of states on the scope of their international law obligations. This is the essence of state sovereignty.

The requirement of express consent provides a good safeguard for that sovereignty with respect to treaties, resolutions of international organizations, and unilateral acts of states. As regards custom, while this safeguard is not fool proof, all the same it is present. Its essence is the two-element nature of custom, i.e. comprising practice and *opinio iuris*. As K. Wolfke summed it up:

Without practice (*consuetudo*), customary international law would obviously be a misnomer, since practice constitutes precisely the main *differentia specifica* of that kind of international law. On the other hand, without the subjective element of acceptance of the practice as law, the difference between international custom and simple regularity of conduct (*usus*) or other non-legal rules of conduct would disappear.<sup>21</sup>

It is visible that the requirements of practice and *opinio iuris* protect states (at least *prima facie*) against the presentation of mere assertions and bold propositions as customary legal norms. It is much more difficult to find such safeguards with respect to general principles. In this respect, they constitute a *prima facie* danger to state sovereignty.

Thus it is worthwhile to examine this apparent danger from different perspectives. One of them has not been tested so far, though it may turn out to be promising. One can call it the “zero-extra” model. It would refer to an idealized model of a state which is willing to respect all its obligations imposed by international law, but unwilling to go over this level, even to a minimum extent. It is especially interesting to see how this model would work with respect to general principles of law. A most intriguing question in this respect is, namely, whether a state has an objective obligation to follow general principles of law or whether they just emerge when a case is brought to the court. If the second answer is the proper one, it would mean that general principles should rather be denied the qualification of a separate and autonomous source of international law. On the other hand, the decision to bring a case to an international court or arbitrator would not be neutral with respect to the scope of legal obligations of states.

As opposed to the hitherto applied theoretical and *a priori* method, I suggest adopting an *a posteriori* analysis, taking as a point of departure several principles of law presented as general principles in the legal literature.

<sup>21</sup> K. Wolfke, *Custom in Present International Law*, Brill, Dordrecht: 1993, pp. 40-41.

### 3. A *POSTERIORI* ANALYSIS

The space limitations of the present text make it impossible for me to devote an entire subchapter to the different typologies of general principles of law presented in the legal literature. What is possible, however, is to refer to some principles or groups of principles present in the writings of eminent specialists.

One of the groups of general principles of law which is very frequently referred to consists of the so-called ‘procedural principles’. They are identified by such authors as A. Ross,<sup>22</sup> F. Berber,<sup>23</sup> N. Quoc Dinh,<sup>24</sup> P.-M. Dupuy,<sup>25</sup> W. Czapliński and A. Wyrózumska.<sup>26</sup> Elements invoked in this group (by all or at least some of those authors) include the principles of: *res iudicata*, *lis pendens*, *estoppel*, *nemo iudex in causa sua propria*, equality of the parties of the proceedings, and *compétence de la compétence*. They also relate to distinguishing between jurisdiction and admissibility, *onus probandi* (or more precisely, the rule according to which facts are to be proved by those asserting them), presumptions, and indirect evidence.<sup>27</sup>

A few remarks can be made. It is beyond doubt that several principles emerge only within given proceedings. That is why the very application of the “zero-extra” model seems completely unthinkable. This can be, paradoxically enough, a calming down factor, if we look at the topic from the perspective of dangers for sovereignty. A state which gave its consent for jurisdiction of a court/arbitrator usually enters one or even a few treaty relationships. What’s more, one can assume that this state is interested in the case being decided and not blocked because of the inability of a court to decide who should prove a given fact or whether to accept indirect evidence.

Not all procedural principles are the same in this respect. Some are of objective importance, both within and outside proceedings. This relates first of all to the principle of *res iudicata* or *lis pendens*. What they have in common with the other procedural principles is that they presuppose finished (*res iudicata*) or unfinished proceedings (*lis pendens*).

In fact, every principle has its own properties. Let us consider the principle *nemo iudex...* One can wonder whether it really deserves to be called a legal norm. A lot depends upon the understanding both of the former (a principle) and the latter (a norm). If we try to apply the “zero-extra” model and understand *nemo iudex...* as an objective prohibition against a state assessing its own legal position, we arrive at a conclusion which is so absurd that it is even difficult to consider it seriously as a legal norm. A very tempting explanation would be to say that we have to do with a nice legal proverb, with

<sup>22</sup> A. Ross, *A Textbook of International Law: General Part*, Longmans, Green and Co., London, New York, Toronto: 1947, p. 90.

<sup>23</sup> Berber, *supra* note 16, p. 71.

<sup>24</sup> Quoc Dinh et al., *supra* note 16, pp. 344-345.

<sup>25</sup> Dupuy, *supra* note 15, p. 357.

<sup>26</sup> Czapliński & Wyrózumska, *supra* note 12, p. 81.

<sup>27</sup> Dupuy, *supra* note 15, p. 357.

no precise legal content. All the same, a competing justification would suggest that if we understand *nemo iudex...* as an indication that an international court is not bound by the legal auto-assessment of a given state-party in given proceedings, it is possible to attribute some legal importance to this formula.

Another element deserving to be mentioned is the principle of *compétence de la compétence*. One can actually wonder whether to qualify as a legal principle meaning *compétence de la compétence* as such, or possibly a lack of *compétence de la compétence*. It is the latter that is attributed to international organizations. What is meant by it is that no organization can grant itself new powers without a basis in the statute of this organization. In fact, however, what is usually meant by *compétence de la compétence* is the power of an international court to assess, rather than create, its competence (in practice its jurisdiction and the possible admissibility of a given case).

The above-mentioned readiness to lower the level of protection of states (or rather not to care about states' sovereignty) is present not only in the context of court/arbitral proceedings. It can also be present in the context of international organizations in which a given state is a member. To be precise, the doctrine of public international law has not revealed any readiness to speak, in the context of general principles of law, about such elements as the principle of conferred powers or the principle of proportionality. Inasmuch as these elements protect the rights of states, there would be no problem with defending the existence of such principles. It would be equally easy to infer them from other customary norms, accepted general principles (not limited to international organizations), or even the statute of a given organization. At the same time, there is some space for principles which do not necessarily work in favour of states. In my opinion we can consider the existence of a principle of implied powers. This would allow for implying competences of an organization which are necessary for its internal functioning. It would cover at least matters such as buying a building, basic equipment, taking security measures around the seat of an organization, and so on. It should be stressed however that it is difficult to compare these two sets of principles with ones aimed at, or believed to regulate, matters outside the context of court proceedings or the functioning within a given organization.

The number of such principles defended in the legal literature is very high. Most authors known to me refer to such principles of law as: *nemo plus iuris, nemo potest commodum capere de iniuria sua propria, lex specialis derogat generali, inadimplenti non est adimplendum*, etc.<sup>28</sup>

There should be no problem with confirming the legal (normative) nature of all those elements. Proving their customary nature, however, could be either easier or more difficult. In my opinion it is the easiest to do this with respect to the principle *inadimplenti non est adimplendum*. State-victims of violations of international law have withheld, withhold, and will continue to withhold their respective services to violating states. What the doctrine of law can do in this respect is to choose an appropriate label

<sup>28</sup> Góralczyk, *supra* note 13, p. 64.

for these types of situations. It could call them sanctions, countermeasures, reprisals, treaty law measures, and so on. There is also no problem with finding *opinio iuris* on this principle. This comfort is not, however, the same with respect to all such principles. That is why Article 38(1)(c) of the ICJ Statute matters so much. States bringing cases to the ICJ can make no claims against the possible application by the Court of such principles.

However, it would be rather unrealistic to believe that even in the absence in Article 38(1)(c) of the PCIJ/ICJ Statute of the principles of law, such principles as *lex specialis...*, *lex posterior...*, *nemo plus iuris, nemo commodum...* would have not found their way into the case-law. They have also found their way into legal writings – undoubtedly including that of both theoreticians as well as governmental advisers. One can say that they form canons of legal thinking all over the world.

It is interesting to examine the possibility of denying their status as principles of law on the basis of a two-element nature of custom. It would perhaps look like this – “we are able to accept a customary norm *nemo plus iuris* only if you are able to prove practice and *opinio iuris* on it.” While there would be no problem with the latter, the former may be more problematic. What however should be done if we wish to assert: “We protect states from elements pretending to be custom, so if you cannot prove practice of *nemo plus iuris* we deny the existence of such a legal norm.” What would this mean however? Does it mean that if we have problems with showing a practice in support of this apparent norm we should accept the presence of a contrary norm? In this sense it would mean a norm according to which a state can transfer more rights that it has. For example, the Soviet Union or Russia would have been able to waive Polish claims to war compensation without any Polish consent. Of course, it goes without saying that such an apparent norm would also need proof of practice and *opinio iuris*, and that (fortunately) it would have no chance of success.

The same can be said about the principle of state responsibility. This principle is invoked by almost all above-cited authors trying to present a system of general principles of law.<sup>29</sup> This should not be surprising if we take into consideration a fragment of the famous PCIJ judgment given in the Chorzów Factory case. According to it:

[t]he essential principle contained in the actual notion of an illegal act – a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals – is that reparation must, as far as possible, wipe-out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.<sup>30</sup>

In this respect we can speak about the existence of a fundamental principle that a state is responsible for breaches of law. As R. Ago put it:

<sup>29</sup> Czaplinski & Wyrozumska, *supra* note 12, p. 81; Quoc Dinh et al., *supra* note 16, pp. 344-345; Rousseau, *supra* note 16, p. 385.

<sup>30</sup> PCIJ, *Factory at Chorzow (Germany v. Poland)*, Judgement, 13 September 1928, PCIJ Publ. Serie A, No. 17, p. 47.

[a] justification for the existence of this fundamental rule has usually been found in the actual existence of an international legal order and in the *legal* nature of the obligations it imposes on its subjects. For it is obvious that if one attempts, as certain advocates of State absolutism have done in the past, to deny the idea of State responsibility because it allegedly conflicts with the idea of sovereignty, one is forced to deny the existence of an international legal order.<sup>31</sup>

If we treat the principle on state responsibility and the principles governing that responsibility as elements without which there is no international law, we can ask a similar question to another set of principles identified by the doctrine, namely, the principles governing the validity (or rather invalidity) of treaties.<sup>32</sup> It is visible that they are inspired by domestic laws (or to be precise by Roman law). If we are ready to confess to their being part of international law, the question is where to stop. Why not to treat all solutions common to different laws as a part of international law?

One can see such a temptation on the part of the doctrine. This is why one can have some doubts insofar as this regards such principles as extinctive prescription, *negotiorum gestio*, or acquisitive prescription.<sup>33</sup> If they are to be treated as a part of international law, what is the sense of pressing on the necessity of sticking to the two-element nature of customary norms? It may be said that if a practice is not consistent with an apparent principle, and this practice cannot itself be called an inhuman activity, there is very little chance for this principle to be viewed as a part of international law. In contrast, if there is no practice and an apparent principle seems to be the only rational choice in a new situation, our readiness to treat such a principle as a part of law is much greater.

## CONCLUSIONS

The doctrine is not unanimous with respect to the presence of general principles of law on the list of sources of international law. An *a posteriori* analysis using the “zero-extra” model leads to some conclusions which may be interesting, but are far from providing clear “yes-no” answers. To a certain extent they may calm down states. If the main aim of this present work is to safeguard the legal security of states and respect for their sovereignty, the results are to a very high extent optimistic. There are some principles which work only within the context of court or arbitral proceedings. By definition, the “zero-extra” model does not apply to them. There are also principles which do not create obligations for states. And there are principles which impose obligations but are so obvious or so useful that states would not be able to do business

<sup>31</sup> Second report on State responsibility by Roberto Ago, Special Rapporteur, *The Origin of International Responsibility*, Document A/CN.4/233, Yearbook of the International Law Commission, 1970, Vol. II, pp. 179-180, para. 13.

<sup>32</sup> Dupuy, *supra* note 15, pp. 357-358.

<sup>33</sup> Czapliński & Wyrzomska, *supra* note 12, p. 81.

if they questioned them. It is easy to defend the thesis that these principles are a part of public international law and should be respected by states as such.

In fact, this tells us more about international community and custom than about general principles as such.

The situation at present makes it possible to see several principles as a part of international law. The question whether they all are customary norms seems to be largely unresolvable. This is why in my opinion the answer which is closest to the truth is that there are some principles which are not norms of international law, despite having been invoked in one or more judgments. There are also some principles which are a part of international law. And there are some which may not be norms but have a great chance of becoming a part of international law after several judgments and an emerging *opinio iuris* on their binding force.

At the same time, states need to exercise a lot of care. The concept of principles of law is a general notion, and it contains a potential which may be dangerous for states. They should be attentive to different trends in the international discourse and react quickly and decisively to counteract future dangers. This is especially true with respect to “paper” or “spoken” law, i.e. political or ideological claims and statements which some powerful states or groups of interests attempt to impose on other states under the guise of “general principles of law.”