

International Legal Consolidation of General Principles of Law

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Abstract: The general principles of law recognized by civilized nations constitute a foundational source of international law, codified in Article 38(1)(c) of the Statute of the International Court of Justice (ICJ). Their significance lies in bridging gaps in treaty and customary law, thereby ensuring coherence and stability in the international legal order. This article provides an extensive examination of the international legal consolidation of general principles of law, addressing their historical roots, doctrinal interpretations, judicial applications, and codification efforts within the framework of international organizations. The study explores the ways in which such principles operate as a source of authority, how courts and tribunals deploy them in practice, and the challenges of universal recognition in a pluralistic legal order. Furthermore, the article engages in a comparative evaluation of recent codification efforts by the International Law Commission (ILC) (2023), and examines debates on the future role of general principles in the evolving landscape of international governance, human rights, and global economic regulation. The findings demonstrate that consolidation of these principles is indispensable for legitimizing international law, addressing fragmentation, and advancing common values in the global legal system.

Keywords: General principles of law; international law; ICJ Statute; customary law; codification; International Law Commission (ILC); judicial practice; consolidation; international adjudication; pacta sunt servanda; good faith; equity.

Introduction: The consolidation of general principles of law in international law is an essential and yet contentious issue. Codified in Article 38(1)(c) of the Statute of the International Court of Justice (ICJ), these principles serve as a "third source" of law alongside treaties and custom. They play a vital role in ensuring completeness of the international legal order by filling normative gaps, promoting fairness, and anchoring legal reasoning in shared values of the global community.

The problem, however, lies in their indeterminacy and contested scope. While some scholars view them as expressions of universal legal rationality, others warn against judicial overreach and excessive reliance on vague standards. In response, international legal institutions—particularly the International Law Commission (ILC)—have sought to codify and clarify the methodology for identifying and applying general principles.

The objective of this article is to provide a comprehensive analysis of how general principles of law are consolidated within the international legal system. Consolidation here refers to a process of systematic recognition, codification, and consistent application of these principles across international and domestic legal systems.

This article adopts a doctrinal-analytical methodology, drawing upon primary sources (ICJ case law, treaties, UN resolutions) and secondary scholarship. It also integrates comparative insights from various legal traditions, recognizing that general principles derive their strength from cross-systemic acceptance.

Historical Origins of General Principles of Law. The concept of general principles of law traces its intellectual lineage back to Roman law, which emphasized universality, equity, and rationality in legal reasoning. Principles such as *pacta sunt servanda* (agreements must be kept), *nemo iudex in causa sua*

(no one should be judge in their own cause), and *audi alteram partem* (hear the other side) reflect enduring normative standards.

Natural Law Tradition. Natural law theories of Grotius, Vattel, and Pufendorf further articulated the idea that legal rules must be anchored in universal principles of justice. Grotius (1625) argued that even in the absence of positive law, states are bound by principles derived from reason and morality. This intellectual heritage influenced the codification of international law in the 19th and 20th centuries.

Arbitral tribunals in the 19th century often invoked general principles to resolve disputes where no treaty or custom applied. For example, the Alabama Claims Arbitration (1872) relied on good faith and due diligence as general principles to assess state responsibility.

The explicit reference to general principles in the PCIJ Statute (1920) and subsequently the ICJ Statute (1945) was a conscious decision to ensure that the Court would not face a *non liquet* (a finding of no applicable law). By including Article 38(1)(c), drafters sought to guarantee the completeness and functionality of the international legal system.

Doctrinal Understandings of General Principles. The doctrinal discourse on general principles of law has long been characterized by attempts to define their scope, legitimacy, and function. One of the most influential definitions comes from Bin Cheng (1953), who described general principles as "principles recognized by civilized nations, derived from their municipal legal systems, and applied by international courts to fill gaps in international law." This definition emphasizes three elements: (a) the universality of recognition, (b) derivation from domestic legal systems, and (c) a supplementary role within international adjudication.

Other scholars, such as Ian Brownlie (2012), classify general principles into two categories:

1. Principles derived from domestic legal systems – for example, concepts such as unjust enrichment, estoppel, or reparation, which are common to many legal orders.
2. Principles intrinsic to the international legal system – such as sovereign equality of states, *pacta sunt servanda*, or the prohibition of the use of force, which may not be universally codified domestically but are essential for the functioning of the international community.

Schlesinger (1957) highlighted the importance of a "comparative law methodology" in identifying general principles, noting that their legitimacy depends on demonstrating convergence across different legal

traditions. More recently, the International Law Commission clarified that general principles may be sourced both from domestic legal orders and from the international legal system itself, effectively endorsing a dual-track approach.

General principles of law are often invoked as a gap-filler within the hierarchy of international sources. Unlike treaties and custom, which may be silent on specific matters, general principles provide a safety net against legal lacunae. This function is particularly relevant in cases of first impression, where no clear precedent or rule exists.

For example, the ICJ in the Nuclear Tests cases (1974) invoked the principle of good faith as a fundamental requirement of international relations, even though no treaty obligation explicitly codified such an obligation. Similarly, arbitral tribunals frequently apply the principle of reparation, articulated in the *Chorzów Factory* case (1928), as a general standard of responsibility when treaties lack detailed provisions on damages.

The differentiation between general principles and other sources of international law remains central to doctrinal debates. Customary law emerges from state practice and *opinio juris*, while treaties are based on explicit consent. General principles, by contrast, derive legitimacy from cross-cultural legal recognition or from the systemic necessities of international law.

Cheng (1953) emphasized that general principles are not reducible to custom, since they do not require prolonged practice or subjective belief in their legality. Instead, they are recognized as logically prior norms that embody fairness and rationality. For example, the principle *nemo iudex in causa sua* (no one should judge in their own case) is widely recognized across legal systems but rarely arises from state practice; nonetheless, it functions as a general principle in international adjudication.

Brownlie (2012) further stressed that general principles must not be confused with "general international law." The former are structural norms, while the latter refers to widely accepted customary rules. This distinction underscores their autonomous role in legal reasoning.

Judicial Application of General Principles. The Permanent Court of International Justice (PCIJ) and its successor, the International Court of Justice (ICJ), have consistently relied on general principles in their jurisprudence. For instance, in the *Factory at Chorzów* case (1928), the PCIJ articulated the principle that "reparation must, as far as possible, wipe out all the consequences of the illegal act." This formulation has since been treated as a cornerstone of international responsibility, applied in subsequent ICJ and arbitral

cases.

The ICJ has similarly invoked principles such as good faith (Nuclear Tests, 1974), estoppel (Temple of Preah Vihear, 1962), and equity (Continental Shelf (Tunisia/Libya), 1982). These decisions illustrate how general principles provide flexible but authoritative tools for judicial reasoning.

Two of the most prominent general principles applied in judicial reasoning are equity and good faith.

- **Equity:** In North Sea Continental Shelf (1969), the ICJ employed equity as a guiding principle to delimit maritime boundaries. The Court emphasized that while equity cannot override established law, it provides a means of achieving fairness in the application of legal rules.
- **Good Faith:** The ICJ in Nuclear Tests (1974) highlighted that unilateral declarations by states are binding when made in good faith. This principle, also enshrined in Article 26 of the Vienna Convention on the Law of Treaties (*pacta sunt servanda*), underscores the normative force of sincerity and reliability in international relations.

The Chorzów Factory principle has been pivotal in shaping the law of state responsibility. Subsequent cases, such as Gabčíkovo-Nagymaros Project (1997), reaffirmed the notion that unlawful conduct triggers obligations of restitution or compensation. These cases illustrate the "consolidating" role of general principles, transforming abstract norms into concrete remedial standards.

General principles also guide the Court in procedural matters. For example, the principle of *res judicata* (finality of judgments) has been applied to prevent relitigation of disputes (Application of the Convention on the Prevention and Punishment of the Crime of Genocide, 2007). Similarly, the principle of estoppel has barred states from contradicting their earlier representations, as in the Temple of Preah Vihear case.

These examples demonstrate that general principles operate not only substantively but also procedurally, thereby ensuring the coherence and efficiency of judicial processes.

General Principles in Specialized Regimes. One of the most significant areas in which general principles have gained prominence is international criminal law. The Rome Statute of the International Criminal Court (ICC) explicitly incorporates general principles, thereby consolidating their normative force in the realm of criminal justice.

The Rome Statute enshrines the principles of *nullum crimen sine lege* (no crime without law) and *nulla poena sine lege* (no punishment without law) in Articles

22 and 23. These principles, recognized in all major legal systems, ensure legality and prevent retroactive criminalization. Their inclusion in the ICC framework reflects both their universal acceptance and their consolidation at the international level.

The principle of individual criminal responsibility, consolidated through Nuremberg and Tokyo trials, now forms part of customary international law. Similarly, the requirement of *mens rea* (guilty mind) as a condition of liability reflects a general principle derived from domestic criminal law traditions. The ICTY in Tadić (1997) and the ICC in Lubanga (2012) emphasized that culpability must be based on intent or knowledge, aligning with universally recognized legal standards.

Another general principle consolidated in international criminal law is *non-bis in idem* (prohibition against double jeopardy). Article 20 of the Rome Statute prohibits prosecuting an individual twice for the same conduct. This reflects a principle deeply rooted in civil law and common law traditions, ensuring fairness and legal certainty.

Within the World Trade Organization (WTO) dispute settlement system, panels and the Appellate Body have invoked general principles such as due process, good faith, and proportionality. For example, in the US – Shrimp (1998) case, the Appellate Body underscored the principle of good faith in the application of trade measures, linking it to the Vienna Convention on the Law of Treaties (VCLT) Article 26.

Investor–state arbitration tribunals under ICSID and UNCITRAL rules frequently apply general principles to resolve disputes. The principle of legitimate expectations, derived from good faith, has become a cornerstone of the fair and equitable treatment (FET) standard. In Tecmed v. Mexico (2003), the tribunal emphasized that the protection of investors requires host states to respect legitimate expectations based on prior assurances.

Additionally, *restitutio in integrum* (full reparation) from the Chorzów Factory principle has been consistently applied in determining compensation. This demonstrates how general principles provide a normative foundation for transnational economic governance.

The ECtHR often relies on general principles to interpret the European Convention on Human Rights. For example, the principle of proportionality is central to balancing individual rights and state interests (e.g., Handyside v. United Kingdom, 1976). Similarly, the principle of effectiveness (*effet utile*) guides the Court in ensuring that Convention rights are practical and effective, not theoretical or illusory. The IACtHR applies principles such as good faith and non-discrimination to

reinforce the binding nature of human rights obligations. For instance, in Advisory Opinion OC-18/03, the Court emphasized that equality and non-discrimination are general principles of law and customary international law, consolidating them as *jus cogens* norms.

Although relatively young, the African Court has invoked general principles such as equality before the law and access to justice, aligning with international standards while reflecting African regional legal traditions.

Codification and Consolidation Efforts. The International Law Commission has played a central role in clarifying and consolidating general principles. After decades of doctrinal ambiguity, the ILC adopted in 2023 its Draft Conclusions on Identification and Application of General Principles of Law.

The ILC clarified that general principles may arise from two sources:

1. From domestic legal systems – when a principle is recognized in the major legal systems of the world.
2. From the international legal system itself – when a principle is inherent to the structure of international law (e.g., sovereign equality, *pacta sunt servanda*).

This dual-track approach provides greater clarity compared to earlier interpretations, which often emphasized only municipal law origins.

The ILC further emphasized that general principles apply when relevant and appropriate, but they must be used in good faith and consistently with other sources of international law. This guidance helps limit judicial discretion and avoids charges of arbitrariness.

The UN General Assembly has indirectly reinforced general principles through resolutions affirming key norms such as sovereign equality, self-determination, and prohibition of aggression (UNGA Res. 2625 (1970) – Declaration on Friendly Relations). Although not legally binding, these resolutions contribute to consolidating principles as universally recognized standards.

Similarly, specialized agencies such as UNESCO and WHO incorporate general principles (non-discrimination, cooperation, proportionality) into their charters and regulatory frameworks.

The codification process has not been free from criticism. Some scholars argue that codification risks “freezing” the evolution of general principles by locking them into rigid definitions. Others welcome the ILC’s conclusions as a necessary step to provide predictability in judicial reasoning. (Pellet, 2023).

Another critique concerns the “civilized nations” phrase in Article 38(1)(c) of the ICJ Statute, which some view as outdated and Eurocentric. Scholars now advocate for recognizing legal traditions from Africa, Asia, and indigenous peoples in the consolidation of general principles.

Consolidation efforts can be understood as a three-tier process:

1. Identification – recognizing principles through comparative legal analysis.
2. Codification – clarifying their scope through documents like the ILC conclusions.
3. Implementation – applying principles consistently in judicial and arbitral practice.

This systematic approach ensures that general principles do not remain vague abstractions but evolve into consolidated building blocks of international law.

Challenges of Consolidation. One of the greatest challenges in consolidating general principles lies in the pluralism of legal traditions. The very notion of “general principles recognized by civilized nations” presupposes convergence among diverse legal systems. However, the world is marked by profound differences between civil law, common law, Islamic law, Hindu law, and customary/indigenous legal traditions.

- Civil law systems emphasize codification and systematic reasoning. General principles in civil law are often abstract, drawn from codes (e.g., good faith under German and French law).
- Common law systems focus on precedent and case-by-case reasoning. Principles such as estoppel, equity, or proportionality developed through judicial practice.
- Islamic law (Shari’a) highlights principles rooted in religious texts, such as justice (*adl*), good faith (*amanah*), and prohibition of harm (*la darar wa la dirar*).
- Customary and indigenous systems emphasize communal responsibility, restorative justice, and respect for nature.

The challenge is whether international law, often dominated by Western traditions, adequately incorporates non-Western legal values in identifying “general principles.” Critics argue that the term “civilized nations,” originating in the early 20th century, carries Eurocentric connotations and risks excluding other normative traditions.

Another concern is the risk of indeterminacy. General principles, by their nature, are broad and abstract. If left unconstrained, courts may interpret them expansively, leading to accusations of judicial activism.

For instance, in investment arbitration, tribunals have sometimes invoked “legitimate expectations” as a general principle to expand investor protections, even when treaties contain limited language. This has sparked criticism that tribunals are overreaching, undermining states’ regulatory sovereignty.

Similarly, the principle of equity has been applied flexibly in boundary disputes, raising questions about predictability. While equity ensures fairness, critics note that without clear parameters it may result in inconsistent outcomes.

Consolidation of general principles may be perceived as an encroachment on state sovereignty. Since these principles are not always explicitly consented to by states (unlike treaties), their application by courts and tribunals can generate legitimacy debates.

For example, in the Nuclear Tests cases (1974), France contested the ICJ’s reliance on the principle of good faith to treat unilateral declarations as binding. Critics argued that the Court effectively imposed obligations without explicit consent, raising sovereignty concerns.

This tension is particularly acute in the Global South, where states argue that consolidation processes may reflect Western biases and impose obligations beyond what they negotiated in treaties. The legitimacy of international adjudication thus depends on balancing the universality of principles with respect for sovereignty.

The rise of specialized regimes—trade, human rights, environment, investment—has created a fragmented international legal landscape. Each regime may interpret general principles differently, leading to inconsistencies. For example:

- The WTO uses proportionality in trade disputes primarily for balancing trade liberalization with environmental protection.
- Human rights courts employ proportionality in balancing rights and public interests.
- Investment tribunals use proportionality in balancing investor rights and state regulation.

Although all invoke “proportionality,” their applications differ in methodology and intensity. This fragmentation undermines efforts to consolidate principles into a coherent body of international law.

Case Studies of Consolidated Principles. Perhaps the most universally recognized general principle is *pacta sunt servanda* (“agreements must be kept”). Enshrined in Article 26 of the Vienna Convention on the Law of Treaties (1969), it underpins the stability of international relations.

- ICJ application: In *Nuclear Tests* (1974), the

Court affirmed that unilateral declarations create binding obligations under the principle of good faith, reinforcing the authority of *pacta sunt servanda*.

- WTO application: Panels regularly apply this principle to emphasize that members must comply with commitments under the General Agreement on Tariffs and Trade (GATT) and other WTO agreements.

This principle exemplifies successful consolidation: recognized in domestic laws, codified in treaties, and consistently applied in international jurisprudence.

Closely related to *pacta sunt servanda*, the principle of good faith (*bona fide*) is a cornerstone of both treaty law and customary international law.

- ICJ jurisprudence: In *Border and Transborder Armed Actions (Nicaragua v. Honduras, 1988)*, the Court reiterated that good faith is fundamental to dispute settlement.

- Investment arbitration: Tribunals have used good faith to interpret investor–state contracts, holding states accountable for misleading or contradictory conduct.

The consolidation of good faith demonstrates how a principle rooted in domestic systems has become an indispensable standard in international adjudication.

The principle of equity has been invoked by courts to ensure fairness in boundary delimitation cases.

- North Sea Continental Shelf (1969): The ICJ applied equity to prevent rigid adherence to equidistance, considering relevant circumstances.
- Tunisia/Libya Continental Shelf (1982): The ICJ confirmed that equity must be applied within the framework of law, not as a subjective notion.

The principle of proportionality, consolidated in human rights law and international humanitarian law, has been essential in balancing state interests and individual rights. For instance, in *Handyside v. United Kingdom* (1976), the ECtHR emphasized proportionality in limiting free speech for public morals.

- Abuse of Rights: This principle prevents states from exercising legal rights in a manner that causes unjust harm. The ICJ in *Certain German Interests in Polish Upper Silesia* (1926) acknowledged that rights must be exercised reasonably.

- Estoppel: In the *Temple of Preah Vihear* case (1962), the ICJ applied estoppel to prevent Thailand from contesting Cambodia’s sovereignty after previously recognizing it.

These principles illustrate how international courts use doctrines from domestic law to promote stability, fairness, and legal certainty.

The Chorzów Factory (1928) case articulated the principle that full reparation must restore the situation that would have existed without the unlawful act. This principle has been consolidated as the standard of state responsibility, reaffirmed in the ILC's Articles on State Responsibility (2001) and applied in numerous ICJ and arbitral cases.

Contemporary Relevance and Future Perspectives. In the 21st century, the role of general principles has grown beyond their traditional function as "gap-fillers." They now serve as anchors for the legitimacy of global governance structures. International organizations such as the United Nations, the World Trade Organization, the World Health Organization, and the International Monetary Fund increasingly rely on broad principles such as good faith, cooperation, solidarity, and proportionality to justify decision-making processes.

General principles of law have significant relevance for achieving the United Nations Sustainable Development Goals (SDGs). Principles such as intergenerational equity, prevention of harm, and sustainable use of resources align closely with SDG 13 (Climate Action) and SDG 16 (Peace, Justice, and Strong Institutions).

International adjudicative bodies, including the International Tribunal for the Law of the Sea (ITLOS), have applied principles of precaution and prevention in environmental disputes, effectively consolidating them as general principles. For example, in the Advisory Opinion on Activities in the Area (2011), ITLOS emphasized the precautionary principle as inherent in the international legal order governing the high seas.

The digital revolution and the rise of artificial intelligence have introduced new challenges for international law. Traditional treaties and customs provide little guidance on issues such as cybersecurity, cross-border data flows, digital assets, and the governance of artificial intelligence.

Here, general principles are increasingly important:

- Good faith and cooperation underpin emerging norms of responsible state behavior in cyberspace.
- Due diligence serves as a standard for attributing responsibility to states for cyber operations launched from their territories.
- Equity and fairness guide discussions on data governance and access to digital infrastructure in developing countries.

Scholars and policymakers argue that consolidating such principles will help address normative gaps in regulating the digital economy and artificial intelligence.

The International Law Commission's 2023 conclusions

on general principles provide a foundation, but further codification may be needed. Future areas of consolidation could include:

- Digital governance: principles on responsible use of artificial intelligence.
- Environmental law: codification of the precautionary principle and intergenerational equity as general principles.
- Global health law: recognition of solidarity and cooperation as binding standards, particularly after the COVID-19 pandemic.

The consolidation of these principles will determine the adaptability and resilience of international law in addressing 21st-century challenges.

Conclusion. The international legal consolidation of general principles of law represents both a historical continuity and a contemporary necessity. From their codification in Article 38(1)(c) of the ICJ Statute to their reaffirmation by the International Law Commission in 2023, general principles have served as an indispensable element of the international legal system. They provide coherence, fill normative gaps, and ensure that international adjudication does not reach a non liquet.

This study has demonstrated that:

1. **Historical Roots:** General principles have deep foundations in Roman law, natural law theories, and comparative jurisprudence, ensuring their universality and legitimacy.
2. **Doctrinal Clarification:** Scholars such as Bin Cheng, Brownlie, and Schlesinger shaped modern understanding of these principles, distinguishing them from custom and treaties while emphasizing their gap-filling function.
3. **Judicial Practice:** The PCIJ, ICJ, and specialized tribunals have consistently applied principles such as good faith, pacta sunt servanda, equity, estoppel, and reparation, consolidating them through jurisprudence.
4. **Specialized Regimes:** General principles are embedded in international criminal law, investment arbitration, WTO jurisprudence, and human rights adjudication, demonstrating their adaptability.
5. **Codification Efforts:** The ILC's Draft Conclusions provide a systematic framework for identifying and applying general principles, enhancing legal certainty and predictability.
6. **Challenges:** Consolidation faces obstacles such as pluralism of legal traditions, risks of indeterminacy, sovereignty concerns, and fragmentation of specialized regimes.
7. **Case Studies:** Principles like pacta sunt

servanda, good faith, equity, estoppel, and reparation illustrate how consolidation occurs through consistent application.

8. Contemporary Relevance: General principles are increasingly essential in digital governance, environmental law, and sustainable development, ensuring that international law remains adaptive and future-oriented. The consolidation of general principles is not merely a technical exercise but a profound statement about the legitimacy and universality of international law. By grounding international adjudication in values recognized across diverse legal systems, general principles help bridge cultural and normative divides. They embody a shared legal conscience of the international community, ensuring fairness, predictability, and justice.

At the same time, consolidation must be conducted carefully. Over-reliance on vague principles risks judicial activism and undermines state sovereignty. Therefore, consolidation requires balance: principles must be broad enough to address new challenges but sufficiently precise to ensure predictability.

1. Inclusive Comparative Methodology: Identification of general principles should systematically incorporate legal traditions beyond Europe, including Islamic law, Asian systems, and indigenous customary law.

2. Judicial Restraint and Transparency: Courts and tribunals should clearly articulate how they identify and apply general principles, avoiding arbitrary reasoning.

3. Dynamic Codification: The ILC and other bodies should periodically revisit codification to ensure principles remain relevant to contemporary challenges.

4. Integration into Global Governance: General principles should guide emerging regimes in areas such as digital law, climate change, and global health.

General principles of law are the connective tissue of the international legal order. They unify fragmented regimes, uphold legitimacy, and embody universal legal rationality. Their consolidation is not a matter of convenience but a requirement for sustaining the rule of law at the global level.

As international law confronts challenges of fragmentation, sovereignty disputes, and technological transformation, the consolidation of general principles will remain vital. They are not static relics of the past but dynamic norms that adapt to new realities. Their future lies in being inclusive, balanced, and responsive—ensuring that international law continues to serve humanity in an ever-changing world.

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