

The Relationship of General Principles of Law with the Basic Principles of International Law

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Abstract: This article explores the theoretical and practical interplay between general principles of law and the foundational principles of international law. As recognized sources of law under Article 38(1)(c) of the Statute of the International Court of Justice, general principles serve as a bridge between national legal systems and the international legal order. In parallel, the basic principles of international law—such as sovereign equality, non-intervention, peaceful settlement of disputes, and respect for human rights—are essential for the legitimacy and stability of the international community. Through historical evolution, jurisprudence, and doctrinal analysis, this paper investigates how general principles inform, complement, and reinforce the basic tenets of international law. The study emphasizes the normative power of general principles in resolving gaps, promoting coherence, and legitimizing international legal processes, especially in a rapidly globalizing legal context. Drawing from both Western and non-Western legal traditions, this research aims to establish a pluralistic understanding of the relationship between these legal categories.

Keywords: General principles of law, international law, public international law, ICJ, legal sources, sovereignty, legitimacy, legal interpretation, jus cogens, customary international law.



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Introduction. The framework of international law is supported by various sources codified in Article 38(1) of the Statute of the International Court of Justice (ICJ), where general principles of law occupy a crucial yet often ambiguous place. These principles, derived from the legal systems of civilized nations, are distinct from treaties and customary international law, serving instead as a normative bridge and interpretive mechanism. Simultaneously, the basic principles of international law—such as the prohibition on the use of force, the principle of sovereign equality, and the obligation to respect human rights—form the structural foundation of the international legal order. Understanding the relationship between these two categories is vital for explaining the legitimacy, coherence, and adaptability of international legal processes.

The Concept of General Principles of Law. General principles of law (GPL) are recognized as a primary source of international law under Article 38(1)(c) of the ICJ Statute, which refers to “the

general principles of law recognized by civilized nations.” These principles derive not from specific international treaties or customs but from commonalities found across the major legal systems of the world.¹ They are foundational legal norms that transcend positive law, often reflecting values such as good faith, equity, proportionality, and legal certainty.

These principles serve several functions in international adjudication: (1) filling gaps in treaties and customary law; (2) aiding in the interpretation of legal norms; and (3) providing legitimacy to international legal decisions when treaty or customary norms are absent or unclear.²

Sources and Derivation. Unlike treaty law or custom, GPL are inductively derived from comparative analysis of national legal systems. The ICJ and other international tribunals often refer to them when resolving disputes lacking directly applicable legal provisions. A classic example is the *Chorzów Factory* case, where the Permanent Court of International Justice applied the principle of full reparation for injury, a notion rooted in many municipal legal systems.

GPL also include procedural principles such as *res judicata*, *audi alteram partem*, and *non bis in idem*, which are universal in legal practice. Substantively, principles such as *pacta sunt servanda* (agreements must be kept) and *good faith* are cornerstones of both contract law and international law.³

Categories of General Principles. General principles may be categorized as:

- ✓ **Substantive** (e.g., good faith, equity, due diligence)
- ✓ **Procedural** (e.g., fair hearing, legal certainty)
- ✓ **Institutional** (e.g., separation of powers, independence of judiciary)

Many of these principles have gained recognition in international law and have been cited in decisions of the ICJ, WTO Appellate Body, ICSID, and human rights courts.

The basic principles of international law, unlike GPL, are generally codified or reflected in the United Nations Charter and the 1970 Declaration on Principles of International Law. They include:

- ✓ Sovereign equality of states
- ✓ Prohibition of the threat or use of force
- ✓ Peaceful settlement of international disputes
- ✓ Non-intervention in the internal affairs of states
- ✓ Self-determination of peoples
- ✓ Cooperation among states
- ✓ Respect for human rights and fundamental freedoms

These principles are considered *jus cogens* (peremptory norms) or erga omnes obligations in many instances, especially in areas such as the prohibition of aggression, genocide, and torture.⁴

Basic principles form the constitutional structure of international law. Their peremptory nature is affirmed in Article 53 of the Vienna Convention on the Law of Treaties (1969), which renders any treaty void if it conflicts with a *jus cogens* norm.

¹ Crawford, J. (2012). *Brownlie's Principles of Public International Law* (8th ed.). Oxford University Press

² Bassiouni, M. C. (1990). *A Functional Approach to General Principles of International Law*. Michigan Journal of International Law, 11(3), 768–818.

³ Shaw, M. N. (2017). *International Law* (8th ed.). Cambridge University Press.

⁴ Cassese, A. (2005). *International Law* (2nd ed.). Oxford University Press.

Unlike GPL, these basic principles are explicitly normative in content and scope and often carry higher legal authority due to their universal acceptance and imperative character.⁵

Natural Law and Early International Legal Thought. The historical roots of the relationship between general principles and foundational international law norms lie in natural law theory. Thinkers such as Hugo Grotius and Emer de Vattel emphasized the role of *natural reason* and universal justice in governing relations among states. These early formulations of law of nations treated many general principles—like *pacta sunt servanda* or sovereign equality—as intrinsic elements of international legal order.⁶

The League of Nations and the PCIJ. With the establishment of the Permanent Court of International Justice in the 1920s, general principles gained formal status as a legal source. The PCIJ frequently applied such principles in its jurisprudence. For example, the PCIJ's approach to state responsibility and reparations in the *Chorzów Factory* case solidified the principle that legal injury must be fully repaired, a norm rooted both in municipal law and the demands of international justice.

After World War II, the establishment of the ICJ under the UN Charter reaffirmed the place of general principles alongside treaty and customary law. Simultaneously, basic principles such as non-aggression, self-determination, and respect for human rights were enshrined in the UN Charter and subsequent international instruments, including the Universal Declaration of Human Rights (1948) and the ICCPR and ICESCR (1966).

This dual development path shows that while general principles provided foundational tools for adjudication and legal reasoning, basic principles provided normative boundaries and overarching obligations.

Jurisprudential Interactions: Role in ICJ and Arbitral Practice. The International Court of Justice (ICJ) frequently relies on general principles of law, especially in cases where treaty provisions are silent or customary law remains ambiguous. For instance, in the *Barcelona Traction* case (1970), the Court referred to the principle of good faith and the doctrine of legal personality to determine the rights of shareholders under international law.⁷

In the *Corfu Channel* case (1949), the ICJ invoked the principle of state responsibility and due diligence, emphasizing that Albania had a duty not only to refrain from harmful acts but also to prevent them (ICJ, 1949). Such rulings showcase how GPL supplement and clarify the scope of basic principles such as non-intervention and respect for sovereignty.

Investor-state dispute settlement (ISDS) tribunals, particularly under the ICSID Convention, also make extensive use of general principles. The principle of legitimate expectations, for example, though not always explicitly codified, has become central in cases like *Tecmed v. Mexico* (2003) and *LG&E v. Argentina* (2006), where it was used to assess fair and equitable treatment under BITs.

Procedural principles such as *estoppel*, *good faith*, and *clean hands* have been crucial in several arbitral decisions. The ad hoc *Iran–US Claims Tribunal* frequently referenced municipal legal systems to ground its interpretations in universally recognized doctrines.⁸

The Legitimacy Function of General Principles in International Law. Legitimacy in international law depends not only on formal sources but also on the perception that international rules reflect

⁵ Simma, B., & Alston, P. (1992). The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles. *Australian Year Book of International Law*, 12, 82–108.

⁶ Grotius, H. (1925). *De Jure Belli ac Pacis* (1625) (translated by F. W. Kelsey). Oxford: Clarendon Press.

⁷ ICJ. (1970). *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, ICJ Reports 1970.

⁸ Carreau, D., & Marrella, F. (2012). *DDI: Droit international*. Paris: Pedone.

broadly accepted legal and moral standards.⁹ General principles, by representing consensus across national legal systems, enhance the normative legitimacy of international judgments and norms.

They serve a *coherence function*, ensuring that the international legal order does not appear arbitrary or disjointed. For example, the principle of proportionality—used in armed conflict, investment arbitration, and human rights cases—anchors various legal regimes to a common evaluative standard.

Institutional Legitimacy and Judicial Reasoning. Judges and arbitrators often turn to general principles to justify their decisions when conventional sources are insufficient. This contributes to institutional legitimacy by demonstrating that the tribunal is acting in accordance with broadly shared legal values, not creating law ex nihilo.

As Roberts (2017) argues, general principles act as "authority-enhancing devices" by offering decision-makers a language of justification that resonates with diverse legal audiences.

General Principles as a Bridge to Global Constitutionalism. In the broader context of global constitutionalism, general principles are increasingly seen as components of an evolving global legal framework that aspires to universality. Norms such as the rule of law, due process, and good governance reflect both constitutional traditions and core international expectations, linking domestic legal orders with international structures.¹⁰

Civil Law Systems and Codification of General Principles. Civil law systems, such as those in France, Germany, and many Latin American states, often explicitly codify general principles within their constitutions or civil codes. This approach facilitates their identification and application at both domestic and international levels.

For instance, the German Civil Code (BGB) enshrines concepts like good faith (*Treu und Glauben*, §242 BGB), which has directly influenced the application of the same principle in international commercial arbitration.

In international law, the influence of civil law traditions is visible in the ICJ's reliance on codified doctrines and the structural interpretation of principles such as *lex specialis* and *lex posterior*.

Common Law Systems and Precedent-Based Identification. In contrast, common law systems—such as those of the UK, US, and Commonwealth countries—derive general principles more inductively through precedent and case law. While principles like equity and reasonableness are recognized, they evolve through jurisprudential interpretation rather than codification.

This influences international tribunals involving common law-trained judges, who often approach general principles with a more pragmatic, case-specific lens. For example, in WTO dispute settlement, the Appellate Body has used the principle of good faith and legitimate expectations cautiously, balancing it with state sovereignty.¹¹

Hybridization and Cross-Fertilization. In modern international adjudication, both traditions contribute to a hybrid normative system. Mixed arbitral tribunals (e.g., ICSID) often feature arbitrators from both legal traditions, leading to cross-fertilization. The principle of *pacta sunt servanda*, recognized across traditions, is a classic example of convergence.

Furthermore, new areas of law such as environmental protection, digital rights, and space law increasingly demand a synthesis of both traditions, underpinned by shared general principles.¹²

⁹ Franck, T. M. (1990). *The Power of Legitimacy Among Nations*. Oxford University Press.

¹⁰ Kumm, M. (2009). The Cosmopolitan Turn in Constitutionalism. In J. L. Dunoff & J. P. Trachtman (Eds.), *Ruling the World? Constitutionalism, International Law, and Global Governance* (pp. 258–325). Cambridge University Press.

¹¹ WTO Appellate Body. (1998). *EC – Hormones*, WT/DS26/AB/R.

¹² Boyle, A., & Chinkin, C. (2007). *The Making of International Law*. Oxford University Press.

Case Studies: Use of General Principles in International Dispute Settlement.

The Gabčíkovo–Nagymaros Case (1997). In this case, the ICJ referred to general principles such as necessity and equitable utilization of shared resources. Hungary had suspended the construction of a dam on the Danube, invoking environmental concerns. The Court acknowledged the relevance of *state of necessity*, a general principle found in domestic laws and reflected in the ILC Articles on State Responsibility.¹³

Nicaragua v. United States (1986). Here, the ICJ invoked the principles of non-intervention and sovereignty, considering them both customary norms and general principles. The United States' support for Contra rebels violated these fundamental standards, and the Court grounded its reasoning in a combination of treaty law, custom, and general legal principles.

Martínez v. Bolivia (2016, UN Human Rights Committee). In human rights jurisprudence, general principles such as due process and access to justice guide the interpretation of international covenants. The Human Rights Committee applied these principles when evaluating political rights under the ICCPR. Such usage confirms that general principles serve as interpretive tools across judicial bodies.

Vienna Convention on the Law of Treaties (1969). Article 31 of the VCLT mandates that treaties be interpreted in good faith in accordance with the ordinary meaning of terms, in their context, and in light of the object and purpose. This good faith requirement is itself a general principle of law and has been essential in interpreting ambiguous or conflicting treaty obligations.

In the context of overlapping treaty regimes (e.g., trade vs. environment), general principles aid in harmonizing norms. The principle of *lex specialis derogat legi generali* (specific law overrides general law) and *harmonious interpretation* ensure that conflicts are minimized and legal coherence is preserved.¹⁴

General principles can supplement treaty provisions when they are silent. In *Loewen v. United States*, an ICSID tribunal discussed due process and abuse of process—principles not detailed in NAFTA text but critical in adjudicating investor claims.¹⁵

Definition and Characteristics. *Jus cogens* norms are peremptory rules from which no derogation is permitted. These include the prohibitions of genocide, slavery, and torture. *Erga omnes* obligations are duties owed to the international community as a whole, such as those concerning self-determination and human rights.¹⁶

While not all general principles rise to the level of *jus cogens*, they often reinforce or reflect peremptory norms. For instance, the principle of dignity underlies both domestic legal systems and human rights treaties, acting as a normative bridge.

The principle of non-retroactivity of criminal law—universal in domestic law—has been affirmed as a general principle and reflects *jus cogens* through its role in ensuring fair trial guarantees.

General principles and customary law often overlap. For example, *pacta sunt servanda* is both a general principle and a customary norm. Their mutual reinforcement provides a stable legal basis for international obligations and fosters predictability.

General Principles in Emerging Areas of Law. Principles like *precaution*, *intergenerational equity*, and *sustainable development* are gaining acceptance as general principles and are guiding

¹³ ICJ. (1997). *Gabčíkovo–Nagymaros Project (Hungary/Slovakia)*, ICJ Reports 1997.

¹⁴ McLachlan, C. (2005). The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention. *International and Comparative Law Quarterly*, 54(2), 279–320.

¹⁵ ICSID. (2003). *Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3.

¹⁶ ICJ. (1970). *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, ICJ Reports 1970.

treaty interpretation (e.g., in climate agreements and biodiversity conventions). In digital governance, general principles such as proportionality, legality, and due process are applied to data protection and digital surveillance.¹⁷ Courts worldwide rely on these when interpreting privacy guarantees in the context of new technologies.

General principles like *non-appropriation*, *peaceful use*, and *common benefit*—found in both customary and general law—guide international behavior in outer space and on the high seas. The Outer Space Treaty (1967) illustrates how general principles underpin the legal regime of the commons.

Challenges and Critiques of General Principles' Use. One criticism is that general principles lack a clear hierarchy and can be vague. Critics argue they grant judges too much discretion and risk judicial activism (Koskenniemi, 2005).

The derivation of general principles often favors Western legal traditions, marginalizing non-Western conceptions of law and justice. This Eurocentrism can lead to legitimacy deficits, particularly in global South jurisdictions.

Because general principles are not negotiated like treaties, their democratic legitimacy is weaker. However, this is mitigated when such principles reflect common values across legal systems.

The use of general principles contributes to the harmonization of international law by integrating shared legal concepts across regimes. However, over-reliance may lead to fragmentation if principles are interpreted differently across courts and tribunals. The functional challenge lies in balancing flexibility with consistency.¹⁸

Conclusion. The relationship between general principles of law and the basic principles of international law is symbiotic and foundational. While basic principles such as sovereignty, non-use of force, and respect for human rights establish the framework of international law, general principles supply the interpretive tools and normative glue that maintain its coherence and adaptability.

General principles act as mediators in legal reasoning, connecting international and domestic systems, and ensuring that international norms are rooted in shared legal culture. Their importance is magnified in the context of legal pluralism, rising treaty congestion, and new global challenges such as climate change, digital governance, and artificial intelligence.

Yet, the use of general principles is not without challenges. Concerns over legal certainty, cultural bias, and judicial overreach demand careful application. The future of international law will depend on our ability to refine, contextualize, and legitimize these principles in a way that upholds the universality and fairness of global legal governance.

In conclusion, the nuanced interplay between general and basic principles is vital to the international legal order's integrity and legitimacy. Their coordinated function supports international law's objectives: maintaining peace, ensuring justice, and promoting the rule of law in an increasingly complex and interconnected world.

REFERENCES

1. Bassiouni, M. C. (1990). *A Functional Approach to General Principles of International Law*. Michigan Journal of International Law, 11(3), 768–818.
2. Boyle, A., & Chinkin, C. (2007). *The Making of International Law*. Oxford University Press.
3. Carreau, D., & Marrella, F. (2012). *DDI: Droit international*. Paris: Pedone.

¹⁷ Kuner, C. (2020). *Transborder Data Flows and Data Privacy Law*. Oxford University Press.

¹⁸ Pauwelyn, J. (2003). *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*. Cambridge University Press.

4. Cassese, A. (2005). *International Law* (2nd ed.). Oxford University Press.
5. Crawford, J. (2012). *Brownlie's Principles of Public International Law* (8th ed.). Oxford University Press.
6. Franck, T. M. (1990). *The Power of Legitimacy Among Nations*. Oxford University Press.
7. Grotius, H. (1925). *De Jure Belli ac Pacis* (1625) (translated by F. W. Kelsey). Oxford: Clarendon Press.
8. ICJ. (1949). *Corfu Channel Case (United Kingdom v. Albania)*, ICJ Reports 1949.
9. ICJ. (1970). *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, ICJ Reports 1970.
10. ICJ. (1986). *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, ICJ Reports 1986.
11. ICJ. (1997). *Gabcíkovo–Nagymaros Project (Hungary/Slovakia)*, ICJ Reports 1997.
12. ICSID. (2003). *Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3.
13. Koskeniemi, M. (2005). *From Apology to Utopia: The Structure of International Legal Argument*. Cambridge University Press.
14. Kumm, M. (2009). The Cosmopolitan Turn in Constitutionalism. In J. L. Dunoff & J. P. Trachtman (Eds.), *Ruling the World? Constitutionalism, International Law, and Global Governance* (pp. 258–325). Cambridge University Press.
15. Kuner, C. (2020). *Transborder Data Flows and Data Privacy Law*. Oxford University Press.
16. McLachlan, C. (2005). The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention. *International and Comparative Law Quarterly*, 54(2), 279–320.
17. Pauwelyn, J. (2003). *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*. Cambridge University Press.
18. Roberts, A. (2017). *Is International Law International?* Oxford University Press.
19. Shaw, M. N. (2017). *International Law* (8th ed.). Cambridge University Press.
20. Simma, B., & Alston, P. (1992). The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles. *Australian Year Book of International Law*, 12, 82–108.
21. WTO Appellate Body. (1998). *EC – Hormones*, WT/DS26/AB/R.