

Concerning draft Conclusions 2, 7 and 8 on the identification of general principles of law formed within the international legal system, we would like to raise some questions regarding the premise of recognition of a general principle by the community of nations as intrinsic to the international legal system. The underpinning studies do not evince the process by which such recognition is supposed to have taken place. Rather, we consider that general principles of law of this type are recognised by international courts and tribunals, not as subsidiary means but as the primary means. Whereas the transposition of general principles of law from the national system of law to the international legal system, **DV LQ WKH FDVH RI μHVWRSSHOT LV LPSRUWDQW WKH D** of law in the international legal system as predicates of law. Examples might include the general principles of law *ex injuria*

μ)UDJPHQWDWLRQ RI ,QWHUQDWLRQDO /DZ¶ SURMHFW ,Q
RWKHU TXHVWLRQV VXFK DV PDULWLPH HQWLWOHPHQW

μH HPSKDVLVH WKH LPSRUWDQFH RI DYR¹⁰ L G K Q V S R U W H D W Q L V
Q R W R Q O \ W R V X E V W D Q W L Y H G U D I W L W K L E X W H D D V G V Z R G R
G U D I W \$ U W R L S Q H R Y L G H P H D Q V W R U H V R O Y H S R W H Q W L D O F

We support the retention of draft Article 7 concerning crimes of international law in which immunity *ratione materiae* will not apply with respect to genocide, crimes against humanity, war crimes, apartheid, torture and enforced disappearance. We note the listing of treaties annexed to clarify the scope of these crimes.¹² Concerning draft Article 4, paragraph 2, one may question whether immunity *ratione personae* F R Y H U V D O O D F W V S H U I R U P private or official capacity, by Heads of State, Heads of Government and Ministers for Foreign Affairs during or prior to