

UNITED STATES MISSION TO THE UNITED NATIONS

Statement of the United States of America
76th Session of the General Assembly Sixth Committee
Agenda Item 82: Report of the International Law Commission
on the Work of its SeventySecond Session
Cluster Three
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Thank you, Madam Chair.

principle of law.

With respect to draft conclusion 7, the United States remains concerned that there is insufficient State practice in the international legal system to determine whether a particular law. We acknowledge and appreciate the considerable efforts of the Special Rapporteur to identify such practice. However, the second report does not alleviate our concerns about the availability and quality of evidence of relevant practice. The report also raises concerns about the lack of objective standards to guide the identification process. Without objective standards, we fear that it will be impossible to achieve the goal that we share with the Special Rapporteur and the criteria . . . not be used as an easy shortcut to identifying norms of international law. The lack of objective standards also opens the door for general principles to be used as a means to address claims about international law that are not properly established.

Relatedly, we share concerns expressed by certain members of the ILC about the extent of the reliance on decisions of international criminal courts and tribunals in the second report. International criminal law is often *res sui generis* and caution must be taken when extrapolating from it to other areas of international law or international law generally. To the extent that there is evidence of State practice that is available from other areas of international law, inclusion from a more representative sampling of international law would greatly enhance the effectiveness of commentaries for the relevant draft conclusions. If such evidence is limited, we encourage the Commission to consider w