XXXVII POLISH YEARBOOK OF INTERNATIONAL LAW
2017
DOI 10.7420/pyil2017j
PL ISSN 0554-498X

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SYSTEMATICITY OF GENERAL PRINCIPLES OF (INTERNATIONAL) LAW – AN OUTLINE

Abstract:
International law reflects systemic conditions compatible with its essence, which means that a space must exist inside the borders of that order for the presence of the phenomenon of general principles. The assumption that international law is a legal system ipso facto *means that general principles must exist within its borders. A general principle of law is a necessary element of every legal order. It is a form and a tool in which the efforts of the individual seeking to comprehend a given phenomenon are materialized through imposing order on it rather than by breaking it down into unconnected and independent elements. Since law is an expression of order, law therefore applies general principles. The systematicity of law, and therefore of international law as well, creates the primary source of the binding force of any norm. Considerations of natural law or positive law justifications for the presence of general principles in international law are of little consequence, as the source of general principles is the systemic nature of the law. Order and hierarchy are part of the rationalized system in which norms of law present themselves. This dependency applies also to norms of international law. The role of the judge is to fill in the appropriate normative content (general principles) in fields constituting at one and the same time both a necessary element and a consequence of the systemic character of the international legal order. Within this context the principle of good faith constitutes one of the bases for considerations concerning the extent of the international legal order. The extent of international law reaches as far as the extent to which evidence of good faith are present among the subjects of international law. The impossibility of describing relations between two states by the use of the determinants of good faith, translated in turn into a normative general principle, determinates the limits of international law.*

Keywords: general principle of international law, general principle of law, limits of international law, systematicity of international legal order

The justification for consideration of the topic of general principles of law in the context of international law should arise out of the perceivable dependencies that weave

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the notions together. The evocation of an understanding of law leads automatically to evocation of the notion of a system. No analysis of law is possible in the absence of a systemic context, whether on the theoretical or practical plane. This dependency is of a fundamental nature and is associated with the essence of the understanding of law *per se*.[1] Thus, if international law is a collection of legal norms, it can only materialize its potential through association with the notion of a system. In this sense, the system is at once both a particular source of international law and its objective, the materialization of which facilitates optimization of the formula of international law.[2] The invocation of the notion of a system in reference to law implies a condition in which a given thing is arranged and ordered. If international law is a legal system, it displays the characteristic of being arranged. It should, however, be specified that this arrangement occurs in accordance with the nature of a given order. Thus, considerations of the coherence, completeness, or unity of international law must take this point of reference into account. International law will continue to display systemic characteristics in accordance with its essence, despite the fact that its systemic nature can, when contrasted with the municipal legal order, give rise to doubts.[3] These can lead to the perception of an asystematicity of the international legal order when viewed from this perspective, which in turn presupposes its systemic imperfection. However, this is an inherent feature of the very specificities of international law, which in fact build the systematicity of that order in accordance with its nature (essence).

When discussing the imposition of order on a certain state of things, it becomes necessary to incorporate into our considerations the topic of the rules or directives which introduce such an order and constitute a guarantee of its existence. International law, as a certain type of legal order, reflects systemic conditions compatible with its essence, which means that a space must exist inside the borders of that order for the presence of the phenomenon of general principles. For if we adopt the assumption that international law is a legal system, this ipso facto means that general principles must exist within its borders – in that part where a common denominator exists for creation

[1] *See* J. Raz, *The Concept of a Legal System: An Introduction to the Theory of Legal System* (2nd ed.), Clarendon Press, Oxford: 1980; A. Marmor, *The Pure Theory of Law*, Stanford Encyclopedia of Philosophy [2016] ("Be this as it may, even if Kelsen erred about the details of the unity of legal systems, his main insight remains true, and quite important. It is true that law is essentially systematic, and it is also true that the idea of legal validity and law's systematic nature are very closely linked. Norms are legally valid within a given system, they have to form part of a system of norms that is in force in a given place and time", available at: https://plato.stanford.edu/entries/lawphil-theory, accessed 30 June 2018); A.A. Cançado Trindade, *International Law for Humankind. Towards a New Jus Gentium* (2nd ed.), Martinus Nijhoff Publishers, Leiden, Boston: 2013, p. 55 ("It is indeed the principles of International Law which, permeating the *corpus juris* of the discipline, render it a truly normative system").

[2] *Cf.* O. Schachter, *Towards a Theory of International Obligation*, in: S.M. Schwebel (ed.), *The Effectiveness of International Decisions*, Oceana Publications, Leyden: 1971, pp. 9-10 (suggested grounds for obligations in international law).

[3] *E.g.* with respect to the scope of application of the notion of a constitution in the context of international law (J. Zajadło, *Konstytucjonalizacja prawa międzynarodowego* [Constitutionalization of international law], 3 Państwo i Prawo 6 (2011)).

of the normativity of law in general, including international law. Thus general principles of international law must exist as well within the scope of the particular nature of the international legal order. The scope of these general principles can partially intersect with other preconditions (e.g. conceptualization of the principle *pacta servanda sunt* as a characteristic condition for the comprehension of law as such, but also as a primary determinant of the essence of international law). A general principle of law is a necessary element of every legal order. It is a form and a tool in which the efforts of the individual seeking to comprehend a given phenomenon is materialized through imposing order on it rather than by breaking it down into unconnected and independent elements.[4] This is the prevailing rationalization, with its source in the nature of human beings and their means of communicating with their surroundings. It would seem that this rationalizing approach to the reality encompassing us can even translate into a rule of validation of law itself,[5] in a form that could be expressed as follows: Since law is an expression of order, law therefore applies. In this sense, the systematicity of law, and therefore of international law as well, would be the primary source of the binding force of any norm. If a norm belongs to a system, is its necessary element, and is systemically appropriate and adapted, then it is in force. James Brierly expressed the issue of rationalization and its impact on the binding force of law by stating that "[t]he ultimate explanation of the binding force of all law is that individuals, whether as single human beings, or associated with others in a state, are constrained, in so far as they are reasonable beings, to believe that order and not chaos is the governing principle of the world in which they have to live."[6]

It would thus result from the foregoing that understanding (*reasoning*) is the source of order. Order, in turn, is achieved via principles. General principles are therefore a necessary element of every legal order. And if they are a necessary element, they are binding, and they have normative value within the reasoning of a given legal order. If we define the role of general principles in this manner, the statement that they are the most important but least spectacular sources of international law is quite

[4] Apart from a situation in which the absence of a connection or dependency is a description of a particular state of order.

[5] A. Clapham, *Brierly's Law of Nations: The Introduction to the Role of International Law in International Relations* (7th ed.), Oxford University Press, Oxford: 2012, p. 68 ("Those who administer law must meet new situations not precisely covered by a formulated rule, by resorting to the principle which medieval writers would have called natural law, and which we generally call reason. Reason in this context does not mean the unassisted reasoning powers of any intelligent person, but rather a 'judicial' reason. This means that a principle to cover the new situation is discovered by applying methods of reasoning which lawyers everywhere accept as valid, for example, the consideration of precedents, the finding of analogies, and resorting to the fundamental principles behind established legal rules.")

[6] *Ibidem*, p. 53. To this view an additional comment has been added by M. Koskenniemi: "[a] descending and ascending argument are made to coincide: order is binding because no social life can exist without it. This is presented as an objective truth, independent of human will or perception. But it is also binding because human beings believe it is. It is now subjective conviction which is primary" (M. Koskenniemi, *From Apology to Utopia. The Structure of International Legal Argument. Reissue with new Epilogue*, Cambridge University Press, Cambridge: 2005, p. 169).

accurate.[7] In light of the preceding determinations, it would seem that considerations of natural law or positive law justifications for the presence of general principles in international law are of little consequence, as their source is the systemic nature of the law. Order and hierarchy are the rationalized state in which norms of law present themselves. This dependency applies also to norms of international law.

Considering the character of the international legal order, one of the important objective tests of the binding force of norms, including those contained in general principles, is the occurrence of a dispute which is then resolved judicially.[8] The role of the judge is to fill in the appropriate normative content in those fields constituting at one and the same time both a necessary element and a consequence of the systemic character of the international legal order, including in the form of general principles. This process does not contradict the consensual nature of international law. Indeed, in no case does a general principle of law, when treated as a source of normativity, displace the consent of states as the primary and fundamental source of normativity in international law.[9] If, in a given factual situation, there are at least two normative utterances authored by states as subjects of international law, they will always attempt to achieve a particular order vis à vis one another, by the same token creating space for an affirmation – at a higher level of development of international law – of particular general principles. If this abstraction is performed by way of judicial reasoning, states can always append to the judgement a relevant commentary addressing the normative meaning of a given general principle, ultimately going so far as to deprive such a generalization of normative significance. The fate of a general principle of law is in every case dependent on precisely the same factor, *id est* whether the distinction of a general principle in harmony with the essence of the international legal order properly "orders" that system, or whether it does not. In the longer term, it is of no importance whether this is contributed to by a real judicial precedent in the substantive sense, or a corrective act of interested states (even in the form of a joint rejection of the verdict by the parties to judicial proceedings).[10] It would seem that an understanding rationalizing the entire international legal order should prevail in the long run.

Thus, the systematicity of international law creates, consistent with its essence, a space for existence of the phenomenon of general principles of (international) law.[11] A

[7] *See* R. Kwiecień in this volume.

[8] L. Ehrlich, *Prawo międzynarodowe* [International law] (4th ed.), Wydawnictwo Prawnicze, Warszawa: 1958, pp. 9-10 ("Thus, a norm of international law is a norm applied by tribunals appointed to apply international law, primarily international courts (e.g. International Court of Justice)").

[9] *See* Kwiecień, *supra* note 7.

[10] An extreme, borderline situation, imaginable considering the voluntary nature of international judicial venues. Its systemic acceptance, however, is dependent on the fulfilment of additional conditions, such as non-violation of the legal interests of a third-party state, not breaching the fundamental principles of the UN Charter, and respect for peremptory norms.

[11] *Cf.* M. Kohen, B. Schramm, *General Principles of Law*, Oxford Bibliographies, available at: https://bit.ly/2BwybtD (accessed 30 June 2018) ("They are logic inferences that can be found in any legal system: the principle of reparation for caused damage, the principles of interpretation of rules, or those used for

general principle of law as a necessary element of the international legal order cannot, insofar as its content is concerned, be an empty set, as it would then not perform any function. First and foremost, all the constituent elements of a given legal order should be functionally programmed and aim at achieving a specified objective.

It remains to be determined how general principles of law acquire their content. It seems that two potential paths can be traced. In the first version, a general principle of law constituting a fixed element in the description of international law, and thus a general principle of international law, is a generalization of all of the primary parts, or of a distinct group of norms (such as within the framework of a *self-contained regime*), i.e. a particular reduction of them to a common denominator.[12] Both a general principle of international law, as well as a general principle of a particular field or subsystem of international law would, in accordance with this meaning, be neutral in systemic terms, and would share the fate of all conditions of the international legal order. Viewed in this light, sets of consensually-agreed norms constitute the material from which general principles are derived. A change in particular primary norms automatically leads to changes in the understanding of general principles, which are in all cases adapted to the system in which they function, without creating contradictions in the course of their application. General principles of international law understood in this manner constitute a kind of genetic code of the sum of all the constituent elements from which they are derived. Applying this model, we can state that, for example, that equity is a general principle of international law, but pursuant to the understanding of it within the international legal order. A similar reservation should be formulated with respect to good faith or *pacta sunt servanda* as examples of other systemically relativized general principles.

In the second path, the space created for general principles is filled by borrowing from beyond the borders of international law. This is done in two ways. Sometimes directly

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the resolution of conflicts of rules – many of them known through Latin maxims – are good examples. […] However, they are also logic inferences that are related to particular areas of international law, giving room for the emergence of general principles specifically applicable in the realm of international law, for example the principle of humanity in international humanitarian law"). That is why both general principles of law and general principles of international law share from the perspective of international legal order the same systemic value, i.e. their normativity. And this applies despite the controversies concerning particular sources of general principles of law and general principles of international law. *Cf.* M.W. Janis, *International Law* (7th ed.), Wolters Kluwer, New York: 2016, p. 59 ("Although some liberally suggest that the availability of general principles of law as a source of international law permits international lawyers to apply natural law, while others restrictively contend that general principles of law may be international law only when draw from customary international practice, the most usual approach to general principles of law as a source of international law relies upon techniques of comparative law. The basic notion is that a general principle of law is some preposition of law so fundamental that it will be found in virtually every legal system"). In this sense each and every general principle of law and general principle of international law constitutes a logical systemic necessity.

[12] *Cf.* A. Ross, *A Textbook of International Law: General Part*, The Lawbook Exchange, Ltd., Clark: 2006, p. 92 ("A special form of interpretation is the deduction of 'principles of International Law' from the material immediately given in treaties and especially in customs. These principles must then be distinguished from the 'general principles of law' previously mentioned, which are derived from national legal material").

and expressly, using a legal provision that invokes an external source. A classic example is Article 38(1) of the ICJ Statute, and other similarly formulated provisions containing a referring clause. When it becomes necessary to resolve a particular dispute, a general principle of law (recognized by civilized nations) becomes one of the potential grounds for doing so. The comparativist effort of the judge, juxtaposing municipal legal orders so as to distinguish a common element among them (a general principle), becomes its substantive source. Taking into account the context of the judicial resolution of a given conflict, this type of analysis can be reduced to the level of the two legal orders of states-parties to proceedings before the ICJ. It should be held that the normativity of a general principle of law thus defined is a source of the rights and duties of the parties to the extent of their being formally bound by the judgment. However, there is no barrier to preventing a general principle thus derived from expanding the scope of its effectiveness via the verdict's influence on the international legal order based on the principle of case precedents, i.e. filling in a foreseen space in that order with an adequate and systemically acceptable general principle. Sticking to the example of the principle of equity, it should however be observed that when juxtaposed with an extra-normative model of equity, the general principle that constitutes its embodiment in international law can turn out to be far more modest than equity *per se*. This is the source of the second suggested path, proposing that the space within the system be filled in by general principles of law treated as forms of reception of values within the borders of international law, in an autonomous form and non-relativized by the conditions of the legal order within the borders of which those values are supposed to be ultimately situated.[13] As an example we may consider an attempt to implement a reasoning leading to such an effect, i.e. the desire to turn a breach of a peremptory norm (*ius cogens*) into automatic grounds for the jurisdiction of an international court that would be appointed to settle a dispute involving a purported breach of that norm.[14] A similar assessment can be offered of the drive to demonstrate that a breach of a peremptory norm terminates the jurisdictional

[13] *Cf.* Trindade, *supra* note 1, p. 291 ("The new jus gentium of our days, the International Law for humankind, already counts on some conceptual achievements. The fact that the concepts both of the jus cogens and of the obligations (and rights) *erga omnes* integrate the conceptual universe of International Law discloses the reassuring and necessary opening of this latter, in the last decades, to certain superior and fundamental values").

[14] ICJ, *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility, Judgment, 3 February 2006, ICJ Rep. 2006, p. 32, para. 64. ("The Court observes, however, as it has already had occasion to emphasize, that 'the *erga omnes* character of a norm and the rule of consent to jurisdiction are two different things' (East Timor (Portugal v. Australia), Judgment, ICJ Reports 1995, p. 102, para. 29), and that the mere fact that rights and obligations *erga omnes* may be at issue in a dispute would not give the Court jurisdiction to entertain that dispute. The same applies to the relationship between peremptory norms of general international law (jus cogens) and the establishment of the Court's jurisdiction: the fact that a dispute relates to compliance with a norm having such a character, which is assuredly the case with regard to the prohibition of genocide, cannot of itself provide a basis for the jurisdiction of the Court to entertain that dispute. Under the Court's Statute that jurisdiction is always based on the consent of the parties.")

immunity of a third-party state in proceedings before a municipal court.[15] The external source of the content of a general principle of law with effect in international law means that the ideological image thereof becomes clearer and more unequivocal within the perception of what is equitable and just. From this perspective, the internal systemic decoding of general principles can be a less spectacular operation, even evoking discomfort in conjunction with the perception of international law norms as imperfect or defective because the concentration of values contained therein is unsatisfactory. It would, however, seem that the path of internal systemic quests remains tightly coupled with the essence of international law. It does not atomize the legal order, it gives birth fewer paradoxes, and ensures greater cohesion (again, within the meaning proper to international law). Going beyond the borders of the international legal order in search of the content of general principles naturally evokes an adaptive reflex, signifying the necessity of adapting a general principle to internal systemic rules. Of course this dependency is also applicable in relation to Article 38(1)(c) of the ICJ Statute. In order to perform their primary task of settling disputes based on the law, in their reasoning judges should only take into account a result associated with the search for a general principle of law which in its essence is in harmony with the nature of the international legal order. Allowing – in the course of passing judgement – for the notion of a general principle that cannot be harmonized with the systemic conditions of international law is ultimately ineffective and counterproductive. It is a harbinger of manifold problems concerning the cohesion of the system. On the other hand, internal systemic decoding of general principles by definition implies their adequacy vis-à-vis the conditions prevalent within the confines of the international legal order. Each of the presented paths for developing general principles from the environment external to international law makes the effectiveness of a given general principle dependent on its systemic adaptation. If we are speaking of a general principle (recognized by civilized nations), the adaptation is expressed in the act of invoking the general principle by a judge after conducting a comparative analysis, including fitting the principle into its appropriate field within the confines of international law. The case is similar at the moment with respect to the reception of autonomous values using the form of a general principle, although the risk of systemic disruption here is greater. Internal systemic decoding of general principles generates fewer problems but, as has already been emphasized, the ideological undertones of a general principle derived in this manner may be more modest, as "justice", as understood by international law, need not necessarily equate to "justice" *per se*.[16]

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[15] ICJ, *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, 3 February 2012, ICJ Rep. 2012, p. 142, para. 97 ("Accordingly, the Court concludes that even on the assumption that the proceedings in the Italian courts involved violations of jus cogens rules, the applicability of the customary international law on State immunity was not affected").

[16] For more on the potential modes and contexts of understanding justice, *see* H. Kelsen, *What is Justice? Justice, Law, and Politics in the Mirror of Science*, University of California Press, Berkeley, Los Angeles, London: 1957.

The preceding considerations also allow us to address terminological issues. General principles of law (recognized by civilized nations) are principles of law derived from municipal legal orders recognized as appropriate grounds for ruling in proceedings before an international court under the relevant provisions of law (e.g. Article 38 of the ICJ Statute), or in extreme cases, principles reflecting the sphere of values in force within those internal orders, or values in general *per se*, and incorporated into general international legal circulation via a true judicial precedent. This scope would include principles of both a procedural and a substantive nature.[17] In turn, *Brownlie's Principles* characterizes general principles of international law as a notion that can alternatively encompass the rules of customary international law, general principles of law referenced in Article 38 of the ICJ Statute and "certain logical propositions underlying judicial reasoning on the basis of existing international law."[18] This category of general principles of international law includes the following principles: consent, reciprocity, equality of states, finality of judgements, validity of treaties, good faith, national jurisdiction, and freedom of the high seas. In conjunction with the abstract and primary character of these principles, the argument has been raised that they do not require further support in the practice of states for their binding force to be retained.[19] Their character means they are effective irrespective of that practice.

In analysing the objective scopes of general principles of law and general principles of international law, we may indicate both groupings (consent, good faith) and individualities (freedom of the high seas). In turn, in assessing the role or function of general principles within international law, it would seem that the elements linking general principles and general principles of law are systematic necessity and normativity. The relevant fields of order of international law must be filled with an appropriate content in order to speak of a legal system. This is a task achieved by both general principles of law and general principles of international law. Determination of the scope of coverage of these fields takes place in accordance with the discussed modes during the judicial settlement of legal disputes.

Because general principles constitute both a systemic necessity and an integral part of the order of international law, each of them displays a normativity appropriate to that order. General principles express legal norms. This is true of all general principles, whether they have already been elaborated or are awaiting elaboration. This rule is not hampered by the meta character assigned to a portion of those general principles.[20]

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[17] J. Crawford, *Brownlie's Principles of Public International Law* (8th ed.), Oxford University Press, Oxford: 2012, p. 35 ("Tribunals have not adopted a mechanical system of borrowing from domestic law. Rather they have employed or adapted modes of general legal reasoning as well as comparative law analogies in order to make a coherent body of rules for application by international judicial process. It is difficult for state practice to generate the evolution of the rules of procedure and evidence as well as the substantive law that a court must employ").

[18] *Ibidem*, p. 37.

[19] *Ibidem*. However, the question remains of how to assess effectiveness, validity, or the binding force derived in the case of a general principle of international law in clear contradiction to a later general practice that departs from the established model.

[20] Upper directives regulating the process of evaluation and application of legal norms. *Cf.* R. Guastini, *Lex superior*, 21 Revus [Online] (2013), available at: http://journals.openedition.org/revus/2664 (accessed

In particular, attention should be paid to the normative character of the principle of good faith. It is present as both a general principle of law and a general principle of international law. It conditions the existence and the entire effectiveness of the legal order, penetrating all of its constituent elements.[21] Since each general principle should be treated in terms of a legal norm, it can clearly serve as grounds for judgement in the settlement of a legal dispute between subjects of international law. In this sense, the principle of good faith constitutes a norm that can underpin the rights and obligations of subjects of international law. The question remains, however, as to the real effectiveness of the principle of good faith and of other general principles of (international) law in the role of norms constituting direct grounds for a ruling. International courts do not frequently issue such verdicts. Such reticence may be incorrectly interpreted as a means of depriving general principles of their normative value. The absence of spectacular decisions invoking the principle of good faith or other general principles is a simple consequence of their character. Good faith is an element of the genetic code forming the nature of international law. It is therefore an element of every norm that constitutes international law. In the case of a specific legal dispute, all norms of a *posteriori* and *specialis* character are given priority in application, without the necessity of invoking the principle of good faith as a separate basis for the ruling, as the good faith vital for arriving at a decision (recall that the dispute is between subjects of international law) is already invoked via more detailed norms which eliminate the need of invoking the principle of good faith. Theoretically, however, we may imagine a situation in which, absent such norms and assuming the mutual insistence of the subjects engaged in an international legal dispute, owing to its normative value the principle of good faith becomes the direct grounds for passing judgement in a dispute, thereby satisfying the conditions for being a borderline case to address the essence of the legal order itself. The dependence invoked provides a good picture of the effectiveness of estoppel in international law, applied in the category of general principles of international law and constituting an elaboration of the principle of good faith. One may ask why cases of a clear invocation of estoppel and treating it as the direct grounds for ruling on a case are so rare? Because the judge identifies the direct justification for a proper ruling in a group of detailed norms, which are backed by the consent of the interested subjects. It is only the necessity of determining the repercussions of the relation, which cannot be linked with the expression of consent and which are backed by good faith, that lead to the direct application of estoppel in the character of a general principle (*a consent-like formula*).[22] If the dispute is associated with a norm

30 June 2018): "*Prima facie,* une métanorme est une norme qui porte, au niveau de méta-langage, sur une autre norme. […] Les normes réglant la production du droit ne portent pas sur d'autres normes: elles portent sur des actes normatifs."

[21] Ehrlich, *supra* note 8, p. 8 ("The principle under which a state is bound in its relations with other states only by virtue of its will, but that it is bound by that will in full, can be called the principle of good faith. It is the fundamental principle of international law").

[22] N.S. Marques Antunes, *Estoppel, Acquiescence and Recognition in Territorial and Boundary Dispute Settlement*, 8(2) Boundary & Territory Briefings 1 (2000), p. 25 ("it may only look like consent"); J. Pan,

justified by consensus, the conclusion is associated with the interpretation and application of the norm in question. In turn, in a situation not encompassed by the consent of the subjects, and in the case of harm to the subject acting in good faith, the presumption of the international law character of mutual relations and the necessity of determining responsibility in conjunction with a breach of good faith all lead to the invocation of estoppel as a general principle of international law – and as a result of the absence of other norms confirmed by the consent of the parties to a dispute, in the event of a dispute it becomes independent grounds for a legal assessment of the entire situation.

The principle of good faith, in conjunction with its functionality characterized above as a meta-general-principle, not only facilitates such decisions in particular cases, but can also constitute a basis for considerations concerning the extent of the international legal order. To put it succinctly, the extent of international law reaches as far as evidence of good faith are present among the subjects of international law. Considering the normative character of the principle of good faith, violating it in mutual relations leads to responsibility under international law, including the rules which can be derived from the principle of good faith and elaborations thereof (e.g. estoppel). Thus, in the event evidence of good faith between subjects is present, an international tribunal may not ascertain a *non liquet* situation by invoking the absence of a clear legal norm and component of the system, as it is under an obligation to resolve the dispute on the grounds of good faith considered as a general principle of international law.[23]

The absence of a systemic justification for a given constituent element means that we are reaching the borders of a given legal order. Thus, the impossibility of describing the relations between two states by the use of the determinants of good faith, translated in turn into a normative general principle, entails the determination of limits of international law. This observation is significant in both theoretical and practical terms. The situation is similar with respect to the issue of the systematicity of general principles of (international) law. On one hand, their consideration on this plane says much about the essence of the international legal order; while on the other it delivers a useful tool for resolving concrete international disputes in a manner strengthening that system, such as by eliminating paradoxes or reinforcing the perception of legal certainty.

Toward a New Framework for Peaceful Settlement of China's Territorial and Boundary Disputes, Martinus Nijhoff Publishers, Leiden, Boston: 2009, p. 29 ("Acquiescence and recognition are the expressions of consent while estoppel is not in itself a manifestation of consent").

[23] Ruling on grounds of the principle of good faith is not related here to the notion of gaps in the law, but rather remaining within the borders of the law. The exclusion of *non liquet* does not, however, mean that we also exclude the notion of a border to the scope of considerations of the essence of a given legal system. Reaching the limit of a given legal order should not automatically be equated with the notion of a gap in the law. *Cf.* H. Lauterpacht, *The Function of Law in the International Community*, Oxford University Press, Oxford: 2011, p. 72 ("It is impossible, as a matter of a priori assumption, to conceive that it is the will of the law that its rule should break down as a result of the refusal to pronounce upon claims. There may be gaps in a statute or in a statutory law as a whole; there may be gaps in the various manifestations of customary law. There are no gaps in the legal system taken as a whole").