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**Report of the International Law Commission
on the work of its seventy-second session
Cluster III**

**Chapter VII: Succession of States in respect of State responsibility
Chapter VIII: General principles of law**

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Chapter VII: Succession of States in respect of State responsibility

Madam Chair,

I will now be addressing the topic of the succession of States in respect of State responsibility. Allow me to use this opportunity to commend the Special Rapporteur, Mr. Pavel Šturma, for the high quality of his Fourth Report which deals in principle with the issue of the impact of succession on the means of redress of internationally wrongful acts.

It is indeed delicate to strike a balance between the principle, expressed in article 9 of the draft articles, that it is the predecessor State, if it continues to exist, that continues to bear obligation to provide reparation for its illegal act and the legal and material reality arising from the succession which, in limited cases, argues for a transfer of the above obligation, at least in part or in certain forms of it, to the successor State. Given that draft articles 16-19 aim to provide normative guidance in this field, a cross-reference and a consequent rephrasing of the second paragraph of article 9, which deals with the issue of transfer of responsibility to the successor State in a rather laconic manner, would be appropriate.

Turning to the content of these provisions, we fully support the Special Rapporteur's proposal, in the second paragraph of draft article 16, that restitution may be requested from the successor State in cases where only the latter is in a position to make such restitution. Turning to compensation and the transfer of the relevant obligation to the successor State, it is obvious that there can be no impossibility of compensation from the part of the predecessor State which committed the wrongful act, given that a State is always in a position to provide this form of reparation. For this reason, it should be clarified whether the relevant obligation is transferred, in certain limited circumstances, to the successor State, as implied in paragraph 57 of the Special Rapporteur's Report, or whether both the predecessor State and the successor State have the obligation to provide compensation in such a case.

Regarding these limited circumstances and to our understanding, they are described in paragraphs 57 and 63 of the Special Rapporteur's report, as cases where there is a "clear direct link" either between the consequences of the act and the territory or the population of the successor State or where the author of the wrongful act was of an organ of the predecessor State which became an organ of the successor State and the latter continues to benefit from the consequences of such act. In our view, in such cases the successor State might be required to provide compensation based on the concept of unjust enrichment and also because the fact that it continues to enjoy the benefits of the wrongful act without any expression of eagerness to provide reparation to the injured State or its nationals, may be considered as a situation similar to a case where a State "acknowledges and adopts the conduct in question as its own" and hence bears responsibility for it, according to article 11 of the ILC's 2001 draft articles on State Responsibility.

In any case, more guidance should be provided in the commentary of the relevant article regarding the criterion of benefit, including in relation to instances of illegal nationalization of foreign property by the central authorities of the predecessor State, which is now located on the territory of the successor State.

On the scenario of the transfer of the right to claim restitution to a successor State, we notice that paragraph 4 of draft article 16 refers to cases where the injury caused by the wrongful act continues to affect the territory or persons of the successor State. To our view, the wording in this case should also adequately cover instances of removal of movable, cultural or other, State property from the territory which came under the jurisdiction of the successor State. For this reason, a scenario whereby the successor State is entitled to restitution if it bears the injurious consequences of the wrongful act, already envisaged in paragraph 4 of draft article 17 dealing with compensation, should, to our view, be added to paragraph 4 of draft article 16.

Turning to the issue of cessation of a wrongful act of the successor State having a continuing character in relation to a wrongful act of the predecessor State, we are of the view that a provision to this end should be included in the draft articles, given that draft article 7 which deals with

such acts refers only to the consequences of the behavior of the successor State in this context and not with the duty to cease such an act.

We welcome the inclusion of draft article 7bis proposed by the Special Rapporteur on the issue of composite acts, which draws inspiration from the corresponding article (article 15) of the ILC's 2001 draft articles on State Responsibility. Paragraph 2 of draft article 7bis deals with the issue of the international wrongful composite act occurring after an action or omission by the successor State. To our view, a similar provision should be inserted in the draft article providing guidance on the issue of an international wrongful composite act occurring as a result of a series of acts or omissions by the predecessor State before the date of state succession, but lasting thereafter through acts or omissions of the successor State.

Chapter VIII: General principles of law

On the topic of general principles of law, Greece would like to express its appreciation to the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, for his second report, as well as to the International Law Commission, for the adoption provisionally of a first set of draft conclusions 1, 2 and 4, with commentaries thereto.

We consider the present study undertaken by the Commission as a useful complement to its previous work on the sources of international law, including, more recently, on the identification of customary international law, and we welcome the Commission's pragmatic approach in dealing with this important topic, that is to provide clarity and guidance on the understanding, identification and application of general principles of law.

At the same time, we are mindful of the complexities of the topic and concur with the Special Rapporteur's view that it needs careful and extensive treatment and that the success of the final outcome will also depend on whether the Commission achieves to find the right balance in order to avoid that general principles of law be used as a shortcut to identifying norms of international law where it is not possible to identify any applicable rules of treaty or customary law.

Turning more specifically to the categories of general principles of law indicated by the Special Rapporteur in his second report, we consider

those of the first category deriving from national legal systems as having a solid legal basis in the *lex lata* and we generally support the proposed methodology for their identification, based on a two-step analysis. At the same time, we would welcome further clarification on the requirement of their compatibility with the fundamental principles of international law and in particular on whether those principles identified in paragraph 83 of the second report are exhaustively listed therein, as well as a more elaborate presentation and justification of the conditions that need to exist to allow the adequate application of a general principle of law in the international legal system.

Regarding, however, the second category, we still have doubts about the existence of general principles of law formed within the international legal system as an autonomous source of international law, separate from customary international law. Within this context, we would like to underline that the Commission's work on this topic should primarily be based on relevant State practice and jurisprudence, while also carefully considering the *travaux préparatoires* of article 38 of the Statute of the International Court of Justice.

I thank you Madam Chair.