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Agenda item 82:
Report of the International Law Commission on
the work of its seventy-second session

Cluster III

Succession of States in respect of states responsibility (Chapter IV)
General principles of law (Chapter VIII)

Statement by Denmark on behalf of the Nordic countries

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Mme./Mr. Chair,

At the outset, I would like to thank the International Law Commission for their report.

I have the honor to deliver this statement on behalf of Iceland, Finland, Norway, Sweden - and my own country - Denmark.

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Mme./Mr. Chair,

Regarding the topic of **Succession of States in respect of states responsibility**, the Nordic countries would like to thank the Special Rapporteur Pavel Šurma for his interesting and well-researched fourth report on Succession of States in respect of State responsibility. This report provides us again with valuable insights into the challenging intersection of law on State succession and law on State responsibility. We are truly pleased with the thorough consideration the Special Rapporteur continues to give to the comments of States in his reports.

First, looking at the fourth report, we note that the Special Rapporteur has reverted to some general aspects of the topic. The Special Rapporteur takes time to explain and fine-tune his methodical starting points, which we find useful as it builds the foundation for the whole work. We tend to agree with the general approach presented in Part One, I. B. paragraphs 23-33 of the report.

In his report, the Special Rapporteur has proposed five new draft articles that pertain to the impact of succession of States on forms of responsibility, draft articles 7 *bis* (*Composite acts*), 16 (*Restitution*), 17 (*Compensation*), 18 (*Satisfaction*) and 19 (*Assurances and guarantees of non-repetition*).

Regarding the new proposals we would like to comment on the proposed article 7 *bis* (*Composite acts*) that complements article 7 (*Continuing acts*). We see draft article 7 *bis* as a particularly necessary component of these draft articles, not least because some of the most serious internationally wrongful acts are characterized by their composite character. We note the discussion in the Commission about the need for further clarity regarding this draft article, especially concerning the scope of paragraphs 1 and 2.

We note that relating to this proposal questions had arisen in the Commission about the responsibility of the predecessor State when it continued to exist, and whether it was necessary to discuss shared responsibility. These questions, we believe, will probably get their answers when the work on this topic progresses further and that draft article 7 *bis* should be fine-tuned in light thereof. Like some members of the Commission pointed

out, we also think that the work of the Institute of International Law regarding continuing and composite acts would seem to provide particularly useful guidance in this regard.

With regard to the future program of work, we are pleased to note that the Special Rapporteur intends to focus his next report on the legal problems arising in situations where there are several successor States, both as injured States and as responsible States. In this context, he also envisages addressing shared responsibility, which is a challenging and important issue.

Turning now to the draft articles that were provisionally adopted with commentaries during this session, that is, draft articles 7 (*Acts having a continuing character*), 8 (*Attribution of conduct of an insurrectional or other movement*) and 9 (*Cases of succession of States when the predecessor State continues to exist*). These draft articles, as we have stated before, appear firmly aligned with the 2001 articles on responsibility of States for internationally wrongful acts, which are, to a large extent, considered to be customary international law. It is thus predominantly a matter of applying existing law to the particular circumstance of succession of States.

We have followed the discussion in the Commission on the ‘may request’ formulation in draft articles 16, 17 and 19 regarding restitution and compensation in cases of succession. In the first paragraph of the provisionally adopted draft article 9 the Commission settled with an entitlement of the injured State ‘to invoke the responsibility of the predecessor State’. The Nordic countries have a slight preference for the ‘entitlement to invoke responsibility’ formulation throughout as it seems to be a more normative and precise expression.

Regarding the final outcome of the topic of Succession of States in respect of State responsibility, we agree with the Commission that the most suitable option could be decided later. In any event, the form of the outcome is not of major importance for us, what counts is a well-drafted and balanced set of provisions that will be useful in practice. At this point, draft articles, as a form are, of course, consistent with the earlier work of the Commission on State responsibility and State Succession.

Finally, as has been said before, State succession is a rare occurrence and the availability of State practice is limited. Therefore, we encourage the Commission to continue to follow a prudent approach and take the time that is needed for a high quality outcome. The Nordic countries are looking forward to the continuing collaboration with the Commission on this topic.

Mme./Mr. Chair,

Turning now to the topic of **General principles of law**, the Nordic countries would like to thank the Special Rapporteur Mr. Marcelo Vázquez-Bermúdez for his second report on this issue. His well-researched and well-structured work provides a solid foundation for this interesting topic that complements the Commission’s earlier work on the principal sources of international law.

Overall, the Nordic countries subscribe to the general approach and preliminary conclusions of the Special Rapporteur. We would like to recall our previous statement on this topic that a cautious approach is warranted given the many sensitivities at play coupled with the cross-cutting nature of this issue.

During this session the Commission provisionally adopted draft conclusions 1, 2 and 4 with commentaries and took note of draft conclusion 5. We welcome this progress in the work of the Commission on this topic.

Turning to the report, the Nordic countries would like to note the following points:

First, we commend the Special Rapporteur's broad survey of relevant State practice, jurisprudence and teachings. It is imperative that the report is sufficiently anchored in the most relevant sources of international law.

Second, while article 38(1)c of the Statute of the International Court of Justice provides an obvious starting point, it does contain the unfortunate reference to recognition by "civilized nations". The Nordic countries should like to reiterate that is an anachronistic and inappropriate term and should not be incorporated into the Commission's conclusions. We are amenable to the proposed wording "community of nations" in draft conclusion 2 but would prefer "international community of States" as it seems clearer and more in line with standard terminology.

Third, while there is no doubt that the category of general principles of law constitute a primary source of international law, alongside treaties and customary international law, general principles of law usually play a subsidiary role, mainly as a means of interpretation, filling gaps or avoiding situations of non liquet. The ICJ has only rarely referred explicitly to principles of international law and, primarily, in the context of procedural obligations rather than substantive law obligations. The criteria for identifying general principles of law must thus be sufficiently strict to avoid exaggerating the legal significance of this particular source of law in relation to the other primary sources of international law.

The Nordic countries agree with the two-step approach to the identification of general principles derived from national legal systems, enshrined in draft conclusion 4, 5 and 6. We note the importance of the second criterion in draft conclusion 4, namely that the principle derived from national legal systems must be transposable to the international level.

Fourth, we agree that general principles of law can emanate also from the international legal system, as highlighted by draft conclusion 7. Delineating such principles from customary international law will require careful consideration and rigorous analysis. We broadly agree with the three approaches to determine the existence and content of a general principle of law formed within the international legal system, as enshrined in draft conclusion 7 a), b) and c). We appreciate the Commission's detailed discussion of this category and welcome the Special Rapporteur's intention to advance this work.

Finally, we support the proposed outcome of this process, namely draft conclusions accompanied by commentaries.

We look forward to the continued collaboration with the Commission as it continues to progress its work on this topic.

Thank you.