



**PERMANENT MISSION OF THE REPUBLIC OF  
SIERRA LEONE TO THE UNITED NATIONS**

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**STATEMENT**

by

**H.E. DR. MICHAEL IMRAN KANU**  
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at the 76<sup>th</sup> Session of the United Nations General Assembly

Agenda Item 82:  
**“Report of the International Law Commission on the work of  
its seventy-second session”**

**Cluster III:**

*Chapters: VII (Succession of States in respect of State responsibility  
and VIII (General principles of law)*

New York, 2<sup>nd</sup> November 2021

*Check Against Delivery*

## **Madam Chair,**

1. My delegation is pleased to join the debate on the third cluster of topics on the agenda item “Report of the International Law Commission on the work of its seventy-second session”, dealing with chapters: VII (Succession of States in respect of State responsibility and VIII (General principles of law).
2. On “**Succession of States in respect of State responsibility**”, added to the program of work of the Commission in 2017, Sierra Leone notes that the Commission had before it for the 72<sup>nd</sup> session the fourth report of the Special Rapporteur containing five new proposed draft articles. Sierra Leone in commending the work of the Commission and Special Rapporteur, **Mr. Pavel Šturma** of the Czech Republic in the current challenging circumstances, further notes that the report was debated, and the proposals referred by the plenary to the Drafting Committee for its consideration, as the Commission continued its deliberation of articles held over from the previous (2019) session.
3. My delegation in noting the pace of work of the Commission on this topic, noted with appreciation the ultimate adoption of three draft articles this concluded session, namely: Acts having a continuing character (draft article 7), Attribution of conduct of an insurrectional or other movement (draft article 8), and Cases of succession of States when the predecessor State continues to exist (draft article 9).
4. Taking the topic as a whole, and the work done so far by the Commission, and as we await the full set of draft

articles for comments, it does appear to my delegation that four overarching themes have emerged, which we will address in this current debate thus:

**a. First**, while this topic is an important effort by the Commission to clarify the applicability of the general rules of State responsibility to the specific context of succession, a matter that was set aside by the Commission's 2001 State responsibility articles, we note the acknowledgment by the Special Rapporteur and the Commission that succession to responsibility is often resolved by political negotiations and is often fact and context specific. Therefore, the general view remains that whatever will be the outcome of the Commission's work on this topic ought to be treated as subsidiary in favour of the priority of agreements entered into by the concerned States. We agree, however, that as a justification, having legal guidance on this topic, even if the issues it gives rise to are primarily settled by negotiations, remains helpful.

**b. Second**, my delegation having given due consideration to the nature of the topic, agrees with the view that there is limited State practice. This implies that the work of the Commission, while alluding to codification, may largely be a form of progressive development. This is not the fundamental issue as such for Sierra Leone. In the current discourse on codification and progressive development in the work of the Commission, the critical factor is transparency as to what is progressive development and codification in the Commission's projects. With reference to the topic, Sierra Leone appreciates that the effort is to ensure that as regards

the general rules, the State responsibility standards will continue to apply and should be followed.

**c.** The **third** theme has been the question whether, as with succession to treaties, when it comes to succession to responsibility, there ought to be a “clean slate” rule or doctrine or an automatic succession rule in the context of an internationally wrongful act. Sierra Leone senses a change in position in the Commission, in that neither a clean slate rule nor an automatic succession rule should be accepted as general rules in relation to succession to responsibility. We will continue to study this change in position, whilst noting its significance in the project.

**d.** The **fourth issue**, which appears to have resurfaced from the Commission’s debates in previous sessions, is the nature of the preferred outcome for this topic, particularly from the perspective of an African State. As proposed, and as the work continues, the outcome is meant to be draft articles. It is unclear yet whether that means that the Commission will be proposing that States negotiate a treaty in this area. We note the supportive view that has been advanced to the extent that the “draft articles” are intended to form the basis for a future convention, as this is considered appropriate since States may be given the basis to negotiate text for a possible convention and to signal their consent through signature and ratification. We note the other view, that the draft articles adopted could take a softer and less ambitious form of draft guidelines. Much like the “Crimes against humanity” project, transparency might be key for States on the one hand and affirming the previous work of the Commission on the subject of “States

Responsibility” critical in this debate on the other hand. Timing is important and transparency relevant. The Commission has to be clear on this issue given the methodological consequences for the topic and the eventual reaction(s) to the recommendation the Commission may put forward at the conclusion of the project.

**Madam Chair,**

5. On “**General principles of law**”, Sierra Leone continues to welcome the work of the Commission on this classic general international law topic, added to the current agenda of the Commission in 2018. Sierra Leone commends the work of the Commission and the Special Rapporteur **Mr. Marcelo Vázquez Bermúdez** of Ecuador, particularly for his excellent second report.
6. My delegation thanks the Secretariat for the very useful memorandum on general principles of law, produced as a result of the request of the Commission to survey “the case law of inter-State arbitral tribunals and international criminal courts and tribunals of a universal character, as well as treaties, which would be particularly relevant for its future work on the topic”.
7. Sierra Leone notes that the Special Rapporteur’s second report deals with the identification of general principles of law within the meaning of Article 38 (1) (c) of the Statute of the International Court of Justice. The report addresses two categories of general principles of law and their corresponding methodologies of identification: that is, those derived from national legal systems and those

formed within the international legal system; and concludes with a consideration of subsidiary means for the determination of general principles of law. We further take note of the proposed six draft conclusions made by the Special Rapporteur in his report and the suggestions for the future programme of work on the topic.

- 8.** As a general observation, Sierra Leone agrees that the starting point for this project is appropriately article 38 (1) (c) of the Statute of the ICJ. In further agreeing with the Special Rapporteur in reflecting the general agreement both within the Commission and the Sixth Committee that the term “civilized nations” is anachronistic, and thus in our view, certainly not reflective of the present nature of the international community. In lieu of amending the Statute of the ICJ, the use of the phrase “community of nations”, already employed to refer to sources of international law in article 15 (2) of the widely accepted International Covenant on Civil and Political Rights, should be utilized in the work of the Commission on the topic, and others, as well as throughout the United Nations system. Reference to the term “civilized nations” and “like terms” are to be completely abandoned.
- 9.** Turning now briefly to the substantive work of the Commission on the topic. Sierra Leone takes note of the decision of the Commission to refer draft conclusions 4 to 9, as contained in the Special Rapporteur’s second report, to the Drafting Committee. The Commission subsequently provisionally adopted draft conclusions 1 (Scope), 2 (Recognition) and 4 (Identification of general principles of law derived from national legal systems) and further took note of draft conclusion 5 (determination of the existence

of a principle common to the principal legal systems of the world); as well as provisionally adopted the commentaries to draft conclusions 1, 2 and 4.

- 10.** This topic is of high importance to Sierra Leone given its impact and nexus to how we view international law in the current pluralistic and cosmopolitan context, and we look forward to studying the adopted draft conclusions and commentaries for a more comprehensive contribution at a later stage. As preliminary observations, Sierra Leone in acknowledging the complexities of the topic would agree with the Special Rapporteur that the analysis of general principles of law as one of the three principal sources of international law requires “careful and extensive treatment”.
- 11.** On **draft conclusion 1**, (Scope of the topic), Sierra Leone agrees that the scope of the draft conclusions is article 38, paragraph 1 (c) of the Statute of the ICJ, which is to be examined through the State practice and the international and national courts decisions.
- 12.** On **draft conclusion 4** (identification of general principles of law derived from national legal systems), Sierra Leone agrees with the Special Rapporteur that the analysis must be wide and representative, covering as many national legal systems as possible, ensuring representativeness of the various legal systems of the world. The draft conclusion adopted in step-one of the two-step analysis, that is, “*the existence of a principle common to the various legal systems of the world*”, is highly welcome by my delegation. Indeed, the term “the various legal systems of the world” is

inclusive and broad, covering the variety and diversity of national legal systems of the world.

13. On the future work programme, Sierra Leone looks forward to the Special Rapporteur's third report, which as proposed, will address the functions of general principles of law and their relationship with other sources of law.
14. In closing, **Madam Chair**, allow me to thank once more the Members of the Commission for their commitment and personal sacrifices to ensure that the work of the Commission progressed in its 72<sup>nd</sup> session despite the challenges, including those associated with online participation. Logistical constraints such as slow internet, for example prevented translation for interventions in the plenary debates. The 2021 experience suggests that, in-person meetings and the usual Commission working methods with uninterrupted interpretation should be ensured in the future sessions.
15. On the part of my delegation, the practice of the plenaries being accessible through UN TV webcast should be maintained.
16. I end by once more commending to Member States the candidature of **Professor Charles Jalloh** of Sierra Leone, endorsed by the African Union for re-election to the Commission for the term 2023-2027. We are proud of his contribution thus far, and we look forward to his active engagement in the work Commission in the next quinquennium with your support.
17. **I thank you.**