



S L O V A K I A

STATEMENT

by

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**76th session of the United Nations General Assembly
Sixth Committee**

**Report of the International Law Commission
on the work of its seventy-second session (item 82)
Cluster III**

New York, 3 November 2021

(check against delivery)

Madam Chair,

In my today's intervention, I will address Chapters VII and VIII of the ILC Report, i.e. the topics "**Succession of States in respect of State responsibility**" and "**General principles of law**". I thank the Chairman of the ILC for having presented the respective parts of the ILC Report to us last week.

Madam Chair,

Addressing first the topic of **Succession of States in respect of State responsibility**, I would like to thank Special Rapporteur Professor Pavel Šturma for his fourth report and commend the Commission for the provisional adoption of draft articles 7, 8 and 9 together with commentaries thereto.

At the outset, I would like to present a few general observations on the topic and the future program of Commission's work thereon.

In our view, consideration of the topic by the Commission can contribute to clarifying rules governing the legal consequences of internationally wrongful acts prior to the date of succession, in particular those relating to reparation. We reiterate our appeal from previous statements that the work of the Commission shall maintain consistency with the Vienna Conventions of 1978 and 1983, as well as the Draft Articles on Nationality of Natural Persons in relation to the Succession of States of 1999. Regarding the final outcome of the work of the ILC, we retain our position that a set of draft articles, as currently chosen by the Special Rapporteur, is the most appropriate form. This is without prejudice to the question of a future convention that shall be decided by the States after the ILC will have finalized its work on the topic. While taking note of the Special Rapporteur's hope to adopt the entire set of articles on first reading already in this year, we tend to agree with more cautious approach on the speed of the Commission in concluding the topic.

Continuing with more specific comments on the provisionally adopted draft articles, Slovakia welcomes that the Commission strived to uphold the

conformity of draft article 7 and 8 with the Articles on responsibility of States for internationally wrongful acts. However, we have some doubts about their added value and relevance for the present topic. The wording of draft article 7 focuses primarily on the situation of an internationally wrongful act of successor State after the date of succession, which is entirely governed by the articles on the responsibility of States, and not relevant for the present topic. In our opinion, the article could rather contain a clear rule on whether a successor State succeeds in the responsibility for an internationally wrongful act of a continuous character of a predecessor State that commenced prior to the date of succession or whether there are any specificities of succession regime resulting from the continuous character of the internationally wrongful act. It would equally be relevant to explore aspects regarding reparations, if not made in full by the predecessor State or aspects related to the reverse situation of internationally wrongful act committed against the predecessor State and continuing after the date of succession. With regards to the draft article 8, it purely duplicates paragraphs 2 a 3 of article 10 of articles on responsibility of States.

Concluding our remarks on the topic, we generally agree with paragraphs 2 and 3 of the draft article 9. However, we believe the language of the paragraph 2 might be streamlined in relation to addressing the injury in order to strengthen the position of the injured State.

Madam Chair,

Turning to the topic of **General principles of law**, Slovakia wishes to thank Special Rapporteur Mr. Marcelo Vázquez-Bermúdez for his second report. We also commend the Commission for provisionally adopting draft conclusions 1, 2 and 4 and the commentaries thereto, and the Secretariat for preparing the memorandum surveying the case-law of inter-State arbitral tribunals and international criminal courts and tribunals of a universal character, as well as relevant treaties for the Commission's future work on the topic.

Madam Chair,

Allow me to present our views first on the draft conclusions provisionally adopted by the Commission and then on the draft conclusions as contained in the Special Rapporteur's second report.

With regards to the commentaries to the draft conclusion 1, Slovakia welcomes that the Commission eventually decided to exclude a reference to formal sources of international law. While we have continuously argued that Article 38 (1) (c) of the Statute of the International Court of Justice should draw the trajectory in approaching general principles of law, we are not convinced that the Statute itself had ever meant to categorize them as formal source of international law. Rather, it had specified what the Court should apply in its decision-making in cases of *non liquet*. Theoretically speaking, general principles of law are not, in our view, formed by a normative legal process resulting in a creation of a legal norm, but rather by a theoretical generalization of domestic legal norms provided that the principles so inducted are common to the legal systems of the world. Hence, they lack, in their nature, the element of normativity, which remains with the norms they are abstracted from. For that reason, we believe that categorization of general principles of law as a material source of international law, and even more generally as a source of international law, should be further explored.

Moving to the draft conclusion 2, we concur with the Commission that the term “civilized nations” is anachronistic and welcome the chosen wording of “community of nations”. Another alternative to be examined is the term “community of States”.

Slovakia also welcomes the draft conclusion 4 aiming to provide the guidance on how to determine the existence and content of a general principle of law. However, since we presume that general principles of law are recognized in and stemming from *foro domestico*, thus originating in the national legal systems, we do not consider their transposition to the international legal system as the necessary requirement of their existence. Moreover, we do not reckon a possibility of a general principle of law not being in compliance with fundamental

principles of international law. Therefore, we consider the respective condition in paragraph a) of the draft conclusion 6 as redundant.

Last but not least, taking into account our understanding of general principles of law, we do not believe they can be formed within the international legal system as implied by the draft conclusion 7. This draft conclusion elaborates, from our perspective, on the general principles of *international* law. Those principles have already been codified within the Declaration of Principles concerning the Friendly Relations between States, and they form either customary law or are embodied in treaties. Consequently, Slovakia considers the draft conclusion 7 to be outside of the scope of the topic at hand.

Madam Chair,

I conclude my statement by expressing again the gratitude to the Special Rapporteur and wishing him a successful continuation in this important topic.

I thank you.