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Mr. Chair,

Turning to the third cluster of items discussed in the report of the International Law Commission, Brazil would like to deliver remarks regarding the topics contained in Chapters VII and VIII, namely: (i) succession of States in respect of State responsibility; and (ii) General principles of law.

With respect to Chapter VII of the ILC Report, Brazil would like to thank Special Rapporteur Pavel Sturma for his fifth report on succession of States in respect of State responsibility and for his in-depth engagement with the subject in his past reports. The current work of the ILC on the matter is instrumental to identifying the rules of international law regarding a subject where State practice is limited. Brazil believes it is important that the Commission continue to be seized of this topic.

Brazil recalls that the ILC has contributed to the codification and progressive development of several aspects of state succession. Its efforts have led to the adoption of the Vienna Convention of

Succession of States in respect of Treaties, to which Brazil is a party, and the Vienna Convention of Succession of States in respect of State Property, Archives and Debts, as well as the draft articles on Nationality of Natural Persons in relation to the Succession of States. By studying the interaction between this area of law and State responsibility, the Commission may contribute to filling a gap in international law.

In cases of State succession, on the one hand, neither the "clean slate" rule nor automatic succession are appropriate as rules of general application.

Brazil acknowledges that a case-by-case analysis will usually be required to ascertain how best to apply the general rules of state responsibility in situations of succession of states. However, the proposed draft guidelines 10, 10bis and 11, on uniting of states, incorporation of a State into another State and dissolution of a State could provide additional legal clarity or guidance on the matter. Given that the draft is intended to be applied in the absence of any different solution agreed upon by the States concerned, there seems to be little added value in limiting the guidelines to encouraging States to solve the issue by negotiation.

Brazil reaffirms its view that the draft guidelines are non-binding in nature and should be subsidiary to agreements concluded between the affected states, as stated by draft guideline 1(2). In this sense, the Commission could present proposals on state responsibility in cases of merger or incorporation of States in keeping with the resolution adopted in 2015 by the Institute of International Law –

provided that these proposals are likewise couched on non-binding language.

In these cases, succession would serve the purpose of preserving the secondary rules of State responsibility, which are of interest to injured States, and would be in accordance with the 1978 Vienna Convention of Succession of States in respect of Treaties, which preserves the relevant primary rules.

Brazil would also welcome an additional analysis of the interplay between, on the one hand, guidelines 10 and 10bis(1), which apply when an internationally wrongful act has been committed by the predecessor State, and, on the other hand, guidelines 13 and 13bis, which apply when the predecessor State is the injured State. The rights to which the injured State is entitled under the secondary rules of State responsibility necessarily entail corresponding obligations owed by the State that committed the internationally wrongful act. It is thus unclear why succession of rights would be recognized by draft guidelines 13 and 13bis, whereas succession of obligations would not be recognized by draft guidelines 10 and 10bis (1).

Additional clarification on the reasons for the difference of treatment foreseen in draft guidelines 10bis (1) and (2) would also be forthcoming. Whereas the latter provides for the responsibility of the incorporating State when it committed an internationally wrongful act prior to incorporation, the former only provides for negotiations with the incorporating State when the incorporated State committed a wrongful act.

Additionally, Brazil would also welcome further clarification on draft guideline 15bis, which addresses cessation and non-repetition, especially on how it may affect the 2001 draft articles on responsibility of States for internationally wrongful acts.

Mr. Chair,

I now turn to the topic of general principles of law. In commending the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, for his insightful and well-researched third report, Brazil underscores the importance of general principles of law (GPL) as a primary source of international law. We also acknowledge the valuable contribution of the ILC in clarifying Article 38, paragraph 1(c), of the Statute of the International Court of Justice.

Brazil believes draft conclusions 10 and 11 accurately confirm that there is no hierarchical relationship between the sources of international law and that a general principle of law may exist in parallel with treaty or customary rules having identical or analogous content. As to draft conclusion 12, it should be taken into account that *jus cogens* norms may be reflected in general principles of law, thereby precluding the application of the *lex specialis* principle.

Moreover, the functions of general principles of law warrant additional clarification, especially as to the relationship between draft conclusions 10 and 13. Further clarity would also be welcome in connection with the interplay between the essential and specific

functions of these principles, referred to in draft conclusions 13 and 14.

As to the draft conclusions adopted by the Commission in its 73rd Session, Brazil supports conclusion 3(a), which acknowledges general principles of law derived from national legal systems. Furthermore, as per draft conclusion 5, these principles must be common to different legal systems around the world. However, the "wide and representative" comparative analysis mentioned in draft conclusion 5(2) must not only include different regions of the world, but it must also be representative of different legal cultures and languages.

In fact, as a Portuguese speaking country, Brazil attaches great importance to this matter. To date, materials from Portuguese speaking countries are often absent from UN documents, with only sparse references that do not properly reflect the importance of our legal tradition. We encourage further efforts to expand the linguistic and geographical reach of analyses aimed at covering national legal systems.

Regarding draft conclusions 3(b) and 7, which address general principles of law formed within the international legal system, further consideration is due as to whether these principles belong to the same category as the primary source of general principles of law derived from national legal systems foreseen in Article 38, paragraph 1(c), of the ICJ Statute.

Brazil would also welcome additional clarification on the precise distinction between the principles referred to in items (a) and (b) of

draft conclusion 3. In fact, there is limited State practice on general principles of law formed within the international legal system, and their structural scope, origin and function seem to be different from those originated *in foro domestico*.

Mr. Chair,

To conclude, I would like to reaffirm the great importance Brazil attaches to the work of the ILC and its substantial contribution to the codification and progressive development of international law. Brazil appreciates the presence of many ILC members during International Law Week, in New York, and their fruitful interaction with the Sixth Committee. Such a dialogue is key to promoting legal certainty and strengthening the international legal system. Brazil is proud of its long-standing presence in the ILC and is committed to continuing to engage constructively with the Commission.

I thank you.