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Cluster III

Chapter VII – Succession of States in respect of State responsibility

Chapter VIII – General principles of law

**Speech delivered by Ms. Alis Lungu, Second Secretary
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Chapter VII – Succession of States in respect of State responsibility

We thank the Special Rapporteur (SR), Mr. Pavel Sturma, for his fifth report and as for his dedication to this complex, yet controversial issue of succession of States in respect of State responsibility. We are grateful for his flexibility and consideration for the views expressed in this Committee by national delegations, as reflected both in his report and in the report of the Commission on this matter. We also commend the work of the International Law Commission (ILC) in preparing the structure and content of the chapter dedicated to this issue.

We note that the ILC has adopted during its last session several draft guidelines and the respective commentaries. We are satisfied with the agreed outcome of the work dedicated to this topic, namely draft guidelines instead of draft articles, taking into consideration a number of arguments that were aptly developed by many delegations during discussions within the Sixth Committee and by the esteemed members of the ILC, during debates on this issue.

Applying the customary law on responsibility of States for internationally wrongful acts remains of paramount importance when dealing with the particular situation of State succession. From this perspective, we welcome the reliance on the 2001 Draft articles on State responsibility, in the commentaries to the guidelines adopted by the ILC at this session.

At the same time, we note the attention of the Commission in seeking the right balance between the rule of automatic succession and the “clean slate” principle, as for example, reflected in commentary to draft guideline 10 (as well as in other situations, presented in other guidelines), on uniting of States and emphasizing the endeavors of the States to reach an agreement on how to address the injury. We find suitable the proposal underlining the need of a solution agreed between the States concerned. This solution is also to be regarded in close connection with one of the paramount premises on which the development of the work on this subject took place, namely the primary role of agreed solutions between the interested States, when dealing with this sensitive issue.

We look forward to the future work of the Commission on the matter.

Chapter VIII – General principles of law

My delegation welcomes the third report on *General principles of law*, prepared by Mr. Marcelo Vazquez-Bermudez, as well as the rich discussions it prompted in the ILC. We take note of the progress made on this cross-cutting issue, namely the provisional adoption of draft conclusions 3, 5 and 7 and their respective commentaries.

We will limit my comments to one issue that kept nurturing ample debates within the Commission, namely whether general principles of law as a source of international law could only emanate from national legal systems, or whether there is a second category – those derived from the international legal system.

During last year's debate, this delegation stated a clear view that general principles of law as a source of international law could only relate to those general principles derived within national legal systems.

We continue to harbour serious doubts as to the existence of a second category of principles, derived from the international law system. We take note of the Special Rapporteur's explanations, arguments and examples, as developed in Part II of his third report, as well as of the debates in the plenary of the Commission and in the Drafting Committee on this very important matter. At the same time, we note that draft conclusions 3 and 7 have been provisionally adopted, together with their commentaries. The relatively cautious language in draft conclusion 3 and 7 (the phrase "may be formed" as opposed to "are derived", when referring to general principles emanating from national law systems), as well as some brief explanations reflected in the adopted commentaries on the different positions expressed within the Commission show that the issue still merits further consideration.

We take the opportunity provided to States to be heard on this matter, once again, necessary feedback that was underlined both in the debates within the Commission and in the comments as such (as in paragraph 5 of the Comment to draft conclusion 7).

In this respect, let me reiterate that it is important not to conflate and confuse identification of general principles of law with identification of customary international law. As many delegations already pointed out during the debates, and as expressed by some members of the Commission, we find the examples considered as belonging to the category of general principles of law being actually embodied into treaty provisions or rules of customary law.

We share the views expressed by some of the Commission's members that the proposed methodology could be problematic from this perspective, namely the distinction between the identification of the two sources of international law: the general principles of law and customary international law.

More clarity on the relationship between general principles of law, fundamental principles of international law (many of which having been referred to - in the SR rapport and by some members of the Commission - as general principles of law) and different principles of various branches of international law could better substantiate the content of the Commission's future work on this subject.

In conclusion, I would like to extend once more this delegation's appreciation for the work undertaken by the ILC members and for the good quality of the report, which prompted rich and valuable discussions in the Sixth Committee.

Thank you!