



SLOVENIA

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STATEMENT

BY

Slovenia

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

Cluster III:

Chapter VII: Succession of States in respect of State responsibility

Chapter VIII: General principles of law

**77th Session of the General Assembly
Sixth Committee**

New York, November 2022

Mr Chairman,

Slovenia is pleased to address the Sixth Committee on the work of the International Law Commission within cluster III on the issue of Succession of States in respect of State responsibility and General principles of law.

Mr Chairman,

In the context of Succession of States in respect of State responsibility, Slovenia commends the Special Rapporteur on successfully concluding his work on State succession in respect of State responsibility. We commend Professor Šturma for his extensive contributions to the codification and progressive development of international law.

On the format, Slovenia – as a successor State itself – prefers a stronger form, particularly draft articles with commentary, as this would be consistent with the Commission's earlier work on State responsibility and State succession. However, we can support the form of "guidelines" should this enable a consensus, States that undergo the process of succession in the future will be able to benefit from this work.

As already mentioned, Slovenia welcomes the Special Rapporteur's success in finding a balance between the clean slate doctrine and the position on automatic succession. The first is a genuine exception in the field of State succession, even though some would like to present it as a rule. It has been used almost exclusively in cases of decolonisation. On the other hand, automatic succession is a widely accepted rule in other fields of State succession but, of course, has no clear confirmation in the field of State responsibility, as the State practice is relatively scarce.

Mr Chairman,

On the text of the draft guidelines and commentaries thereto provisionally adopted by the Commission at its seventy-third session, Slovenia generally supports these guidelines and commentaries.

Some of the proposed guidelines are straightforward and rest exclusively on the rules of State responsibility with elements of succession added only for further clarification, for example paragraphs, 1 and 2 of Guideline 7 bis; paragraph 2 of Guideline 10 bis; paragraph 1 of Guideline 12 and so forth. Since, as mentioned, they rest on existing rules and state practice, such guidelines should be adopted without much ado.

Some of the proposed guidelines fall into the area of progressive development, for example, paragraph 3 of Guideline 7 bis; Guideline 10; paragraph 1 of Guideline 10 bis.

In our opinion, the rationale for these proposed guidelines is aptly described by the provisionally adopted commentaries. Furthermore, the Special Rapporteur has found a solid foundation with the use of "without prejudice" clauses and the priority of agreements among concerned States.

We would especially like to commend the commentaries on Guideline 11 and Guideline 14 (both on Dissolution of a State), which apply the terminology of the Vienna Convention on Succession of States in respect of State Property, Archives and Debts and seek to find a relevant connection between a wrongful act and successor States.

Slovenia agrees with the Special Rapporteur that domestic laws should be cited as State practice. As stated by the Special Rapporteur, the report does not claim that they were an expression of a State's legal conviction that it was fulfilling an obligation under international law. Nevertheless, such acts represent State practice and were driven by the social need to address, in the context of succession of States, the injury for which the predecessor State was responsible.

To conclude, Slovenia strongly supports future work on this topic. It would be regrettable if the Commission's work on the topic was left without a conclusion.

Mr Chairman,

Turning to the topic of General Principles of Law, we would first like to thank the Special Rapporteur, Mr Vázquez-Bermúdez, for his comprehensive reports on the processes and mechanisms of identifying general principles of law. In his third report, the Special Rapporteur discussed the issue of transposition, general principles of law formed within the international legal system, and the functions of general principles of law and their relationship with other sources of international law.

The codification of general principles of law is a challenging and comprehensive task mainly because of the lack of unification and the unsystematic practice of States and international courts and tribunals, no commonly agreed-upon theoretical approach, and different use of terminology.

However, despite all of the questions and difficulties in determining them, today there is no doubt that they represent an independent source of international law, which is not to be confused with customary international law.

We note with interest the proposed dual approach that general principles of law can be derived not only from national legal systems but also from the international legal order itself. General principles of both categories embody the "implied consent" of States in the light of the requirements and conditions of international law.

As the Special Rapporteur rightly observes, the main challenge consists in formulating a clear and precise methodology for the identification of general principles of law formed within the international legal system.

The ILC work on general principles of law has come to a common understanding that codification should not be overly prescriptive, nor try to draw up a *numerus clausus* list. Slovenia also agrees that determining the compatibility of the principle with the international legal system was necessary.

We do believe that regarding the use of the *lex specialis* principle, general principles of law may be of more general nature in relation to other norms of international law because of the way they were formed, which distinguishes them from treaties and customary international law. It is our view that general principles of law are parallel to the other sources of international law and are not limited to practical gap-filling role.

As has been repeatedly emphasised, identification of a norm as a general principle of law should not create a shortcut to the process of the formation of international custom as opposed to "recognition".

Mr Chairman,

We believe that the Commission should also further explore newly formed principles of international law used by different international courts and tribunals, such as the principle of good neighbourly relations and equity, the latter being used more often recently, especially in the context of climate change.

Thank you, Mr Chairman