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Statement by Mr. Dongkyu Moon (First Secretary)
Permanent Mission of the Republic of Korea to the United Nations
Report of the International Law Commission on the work of the seventy-third session (Agenda
77)
Sixth Committee, 77th session of UNGA
New York

Succession of States in respect of State Responsibility

My delegation welcomes the continuing discussion on the topic “Succession of States in respect of State Responsibility” and would like to thank Special Rapporteur Pavel Šturma for his outstanding contribution to the topic and for presenting his fifth report. We would also like to thank all ILC members for their valuable contributions to this important topic, especially the Drafting Committee, chaired by Professor Ki-gab Park, for preparing the draft guidelines, including those provisions provisionally adopted by the Commission in the previous sessions in accordance with the decision of the Commission.

My delegation respects the decision made by the Commission to change the format of the work from “draft articles” to “guidelines” and regards this as the appropriate form for the work on this topic. While consistency with the previous work of the Commission with respect to State succession is important, my delegation takes note of the relative paucity of State practices as well as insufficient and inconsistent State practices in the issue of succession of States in respect of State responsibility. My delegation also concurs with those ILC members who believe that the work would not be able to produce a set of binding rules. Draft articles adopted so far by the Commission or those adopted provisionally by the Drafting Committee or suggested by the Special Rapporteur are mixed in nature, with some having a normative and prescriptive character (for instance, Part I and Part IV) and others a recommendatory or guideline character (Part II and Part III).

My delegation finds that the previously adopted Draft Articles 1, 2, 5, 7, 8 and 9 are to be revised in the form of draft guidelines. (A/77/10, p.286, para.76, ft.1144) My delegation also takes note that the Commission provisionally adopted Draft Guidelines 6, 7, 10, 11, 12, 13, 13bis, 14, 15, 15bis and commentaries thereto in its seventy-third session.

Regarding the provisionally adopted Draft Guidelines, my delegation supports the approach taken by the Commission to examine the situation according to the specific categories of State succession. My delegation also supports distinguishing the situation where two or more States merge to form one successor State but all the predecessor States cease to exist, namely the Uniting of States, from the situation where one or more States become incorporated into another State. My delegation also supports maintaining the distinction between situations where the predecessor State may cease to exist (for instance, merger, incorporation, dissolution) from situations where the predecessor State continues to exist (newly independent State and

separation of parts of a State, as dealt with together under draft Guideline 12, “Cases of succession of States when the predecessor State continues to exist”).

Again, my delegation also appreciates the outstanding contribution of the Special Rapporteur, Mr. Pavel Šturma, whose mastery of the subject, guidance, and cooperation greatly facilitated the work on this topic.

General Principles of Law

The Korean government welcomes the relatively speedy outcome on the topic “general principles of law” compared with other topics and would like to thank Special Rapporteur Mr. Marcelo Vásquez-Bermúdez for his outstanding contribution to the topic and for presenting his third report. We also thank to all ILC members for their valuable contribution to this important topic. My delegation takes note that, during this session, the Commission went over the report submitted by the Drafting Committee, in which the committee consolidated the text of draft conclusions 1 to 11 after reviewing all draft conclusions suggested by the Special Rapporteur thus far, and adopted the commentaries to draft conclusions 3, 5 and 7.

Among the draft conclusions provisionally adopted by the Commission this year, the Korean government would like to take note of draft conclusion 3 (categories of general principles of law) and draft conclusion 7 (Identification of general principles of law formed within the international legal system). The current draft conclusion 3 mentions not only “general principles of law derived from national legal systems,” which are well accepted by States and scholars, but also “general principles of law that may be formed in international legal systems”. The latter is dealt in draft conclusion 7 and, during this session, a heated debate ensued about whether it would be appropriate to recognize the general principles of law that might be formed in the international legal system. Furthermore, draft conclusion 7 distinguishes the two sub-types of general principles of law that can be formed in the international legal system: paragraph 1 suggests the possibility of the existence of general principles of law that have “intrinsic” characteristics and paragraph 2 foresees that these do not have such characteristics. The question arises as to what is meant specifically by “intrinsic to the international legal system”. The Korean government carefully reviewed the relevant commentaries. Even though para.2 of the commentaries of draft conclusion 7 mentions that (quote) “The Commission considers that the existence of this type of general principle of law is justified for a number of reasons.” (unquote) (Report of the ILC(2022), p.322.), we could not find clear and convincing explanations and examples. Therefore, we hope that this part of commentaries will be complemented later.

My delegation once again thanks Special Rapporteur Mr. Marcelo Vásquez-Bermúdez and hopes that next year the Commission will be able to adopt the first reading text with a complete set of commentaries. /END/