



**PERMANENT MISSION OF THE REPUBLIC OF  
SIERRA LEONE TO THE UNITED NATIONS**

336 East 45<sup>th</sup> Street, New York NY 10017

**Statement**

by

**H.E. Mr. Alhaji Fanday Turay**  
Permanent Representative

at the 77<sup>th</sup> Session of the United Nations General Assembly

Agenda item 77:

**“Report of the International Law Commission on the  
work of its seventy-third session”**

**Cluster III:**

*Chps: VII (Succession of States in respect of State  
responsibility) and VIII (General principles of law)*

New York, 2<sup>nd</sup> November 2022

Check Against Delivery

**Chair,**

1. In the Cluster III debate on agenda item: "*Report of the International Law Commission on the work of its seventy-third session*", the delegation of Sierra Leone will first address the topic "***Succession of States in Respect of State Responsibility***".
2. The Commission considered the fifth report of the Special Rapporteur, primarily addressing the problems relating to a plurality of injured successor States or of responsible successor States and decided to change the form of output from Draft Articles to Draft Guidelines. This appears to have been in response to State concerns. There will be an opportunity to have a further examination of the change of form when the Draft Guidelines and commentaries would be adopted on First Reading.

3. The deliberations in the Commission in which it considered the difference between the two forms of outcomes remains helpful, as we await greater clarity by the Commission on the effect of the nomenclature of the forms of outcomes, from the Working Group on Methods of Work, we take note that the Commission understands, at least for the purposes of this topic, Draft Guidelines as intended to provide normative guidance to States while Draft Articles are framed as directions to States, often suitable for incorporation in a treaty.

4. We therefore note that accordingly, the words "shall be" were replaced by "is" in Draft Guideline 8, reflecting the descriptive nature of the provision. Likewise, in Draft Guidelines 9, paragraph 2, 10, 10 bis and 11, the imperative verb "shall" was replaced by "should", thus reframing the provisions as guidance to States.

5. We take note of the Draft Guidelines (6, 7 bis, 10, 10 bis and 11, 12, 13, 13 bis, 14, 15 and 15 bis), as well as their commentaries provisionally adopted by the Commission. And we further take note of the Draft Guidelines (1, 2, 5, 7, 8, 9 and 15ter) that are still to be discussed and adopted by the Commission, with their commentaries.

6. Sierra Leone regrets that, for reasons that are unclear to us and may well be internal to the working methods of the Commission, it fell short of completing a first reading on this interesting if sometimes complex topic. Nevertheless, Sierra Leone welcomes the transparency with which the work completed to date was reported in Chapter VII of this year's report. Among other things, consolidating the text and commentaries in a single chapter with helpful footnotes made it easier for delegations to understand the status of the work done over the past few years on this topic. We

intend to study carefully the proposals of the Commission on this topic presented in Chapter VII of the Report along with their accompanying commentaries.

7. As a general matter, partly for reasons of legal certainty and predictability, my delegation considers that it remains vital that the guidelines proffered by the Commission stay consistent with the general regime of responsibility for States for internationally wrongful acts as reflected in the now widely used work of the Commission completed in 2001. We further consider that the draft guidelines should remain non-binding and subsidiary to any agreements concluded by the States concerned. Pending our study of the Commission's work to date, on this topic, Sierra Leone reserves its position and looks forward to the opportunity to comment, at a later stage, on the substance of the Commission's provisionally adopted draft guidelines.

8. Two final remarks on this topic. First, we wish to thank the Special Rapporteur, **Mr. Pavel Šturma, (Czech Republic)**, for leading the work of the Commission on the topic. We thank him for his notable contributions, hard work and dedication for the benefit of the Commission, and ultimately, States and the international legal community as a whole.

9. Second final remark on the topic. As the Commission starts a new quinquennium next session, the Commission's new composition will have to decide on the future of Succession of States in respect of State responsibility topic. The Commission has the various options it debated this session, including a) appointing a new special rapporteur to continue the topic, or b) discontinuing the Commission's work on an instrument, and, finally c) convening a Working Group, with the aim of producing a report on the topic that would be annexed to the



Commission's report. The latter approach, followed for recent topic (*aut dedere aut judicare*) led to the completion of a report in 2014. This seems to be the middle and reasonable approach, which we are persuaded to support.

10. That said, Sierra Leone took note that the views of the current members were divided on these options. While those views could change, as the composition of the Commission changes, we hope that the Commission will take an institutional approach. We urge, in this regard, for the Commission to be transparent and inclusive when deciding the fate of this topic. We also urge it to carefully study the implications of the choice on the future of this topic also from the practical perspective of the utility of the final outcome for States.

## **Chair**

11. Turning now to the topic "**General Principles of Law**", in which the Commission considered the

Special Rapporteur's **Mr. Marcelo Vázquez-Bermúdez, (Ecuador)** third report, in which 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.

12. We take note that the Special Rapporteur proposed five draft conclusions, and also made suggestions for the future programme of work on the topic. The proposed draft conclusions have been adopted, including provisionally Draft Conclusions 7, "*Identification of general principles of law formed within the international legal system*". It is noted that this second category of general principles of law, that is, the general principles of law formed within the international legal system, has been subjected to divergent views among Commission members and States in the Sixth Committee.



13. The provisionally adopted Draft Conclusion 7 reads:

- I. *“To determine the existence and content of a general principle of law that may be formed within the international legal system, it is necessary to ascertain that the community of nations has recognised the principle as intrinsic to the international legal system.*
- II. *Paragraph 1 is without prejudice to the question of the possible existence of other general principles of law formed within the international legal system.”*

14. Although the summary of the debate on Draft Conclusion has not been included in the report of the Commission, following its usual practice, we, however, take note that Part Two of the Special Rapporteur's third report, *“summarized the differing views expressed in relation to the second category*

*of general principles of law reflected in draft conclusion 7, [...], and clarified certain matters regarding the methodology for their identification".*

15. Given the extensive nature in which the issue was addressed in Part II of the Special Rapporteur third report, and until we have full sight of the debate in the Commission, we are comforted by the Special Rapporteur's reiteration "*that there was sufficient practice and doctrine to substantiate a draft conclusion on the second category, while acknowledging that caution was required, especially in view of concerns raised that this category should not be confused with customary international law*". In other words, like many members of the Commission and the Special Rapporteur, Sierra Leone supports the existence of a second category of general principles of law inherent to the international legal system.

16. We further share the view on the challenge that remains in formulating a clear and precise methodology for the identification of general principles of law formed within the international legal system. Hence, the balance struck between rigour and flexibility in the identification of general principles of law formed within the international legal system is well noted.

17. Sierra Leone continues to welcome the work of the Commission on this classic general international law topic and commends the work of the Commission and the Special Rapporteur. While we would have appreciated further consideration of some issues raised by some members of the Commission in the plenary debate this year, in relation to this topic such as the principle of equity, we understand that the Special Rapporteur intends to finalize the completion of the first reading on this topic next year with the submission of the relevant commentaries to all the provisionally adopted

guidelines. We note the brevity of some of the commentaries, and hope that the Commission will consider elaborating further on some of the rationales for the various draft conclusions provisionally adopted by the Commission. We look forward to the outcome of the work on the topic, and we hope to provide detailed comments on the overall substance of the Commission's work on this important topic subsequent to the First Reading.

18. In closing, **Chair**, allow me to thank once more all the Members of the Commission for their valuable contributions, commitment and personal sacrifices to ensure that the work of the Commission progressed in its 73<sup>rd</sup> session, even with the hybrid format. We repeat our call for a return to the in-person meetings and the usual Commission working methods with uninterrupted interpretation in the future sessions.

19. I thank you.