सत्यमेव जयते

INDIA
भारत

STATEMENT BY

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ON

AGENDA ITEM 82
ILC CLUSTER 3

CHAPTER VII*: SUCCESSION OF STATES IN RESPECT OF STATE RESPONSIBILITY* &
CHAPTER VIII: GENERAL PRINCIPLES OF LAW

AT THE

SIXTH COMMITTEE OF THE 76th SESSION OF THE

UNITED NATIONS GENERAL ASSEMBLY

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Succession of States in respect of State Responsibility

India would like to thank Mr. Pavel Sturma (Czech Republic) Special Rapporteur for his fourth Report on "Succession of States in respect of State Responsibility". The Special Rapporteur has provided an overview of the work on the topic and has addressed questions related to the impact of succession of States on forms of responsibility in particular reparation (restitution, compensation and satisfaction) in his Report.

2. My delegation takes note of draft articles as proposed by the Rapporteur in the fourth report which inter alia include: composite acts ie when an internationally wrongful act is of a composite character(7 bis): Restitution in cases of succession of States where a predecessor State continues to exist (Draft article16); and also seeking compensation in case of succession of states where a predecessor state continues to exist (Draft Article17); satisfaction for the injury caused (Draft Article18); and assurances and guarantees of non repetition (Draft Article 19). Following the debate in plenary, the Commission decided to refer draft articles 7bis,16, 17,18 and19 to the Drafting Committee.

3. At the outset, we take note of the explanation provided by Special Rapporteur with regard to Draft Article 7 bis that composite act differed from acts having a continuing character. In our view, the Special Rapporteur needs to further examine issues related to shared responsibility when a predecessor State continued to exist and also when the obligation of cessation applied in case of a composite act or a continuing act which occurred during the succession process.

Mr. Chairman,

4. With regard to Draft Article16 to 19 my Delegation is of the view that there must be a clear distinction between reparation on one hand and cessation and assurances and guarantees of non repetition on the other. We believe that there is a need to simplify draft Articles 16 to 19, so as to make them two provisions: one concerning cessation and non- repetition and other concerning reparation.

5. We agree with Special Rapporteur's view regarding the subsidiary nature of the draft Articles on Succession of States in respect of State Responsibility and that priority must be given to the agreements between the States concerned. We also agree that there is a need to take into consideration geographically diverse sources of state practice and highlighting them in the commentary so as to describe the relationship between State practice and each draft Article. This would clearly show the draft articles which were supported by state practice and those draft articles which constituted progressive development of International Law.

6. In conclusion, My delegation is of the view like many others that the preference for the outcome for the topic will take its shape either in the form of draft guidelines, principles or model clauses only when the Commission concludes most of its substantive work.

Madam Chair, now I turn on to the topic**, General Principles of Law.**

7. We welcome the second report of the Special Rapporteur, Mr. Marcelo Vazquez Bermudez, on "General Principles of Law". The second Report deals with the methodology for identifying general principles of Law, which are one of the three principle sources of international law. The report proposes six draft conclusions which have been referred to the Drafting Committee.

8. My delegation recognizes the importance of the topic and at the same time, believes that a careful approach is required to be taken with regard to the sources of international law. We believe that basis for the work of the Commission on the topic should be Article 38, paragraph 1 (c) of the Statute of the International Court of Justice and also State practice and jurisprudence.

9. We are of the view that there is no hierarchy among the sources of international law under Article 38 of the Statue of the International Court of Justice. Accordingly, we opine that general principles of law should not be described as a subsidiary source or secondary source. Instead, we suggest considering the term "supplementary source" to qualify the sources of general principles of law.

10. As regards the use of the term "civilized nations" under Article 38(l)(c), we agree with the majority view that it is inappropriate and outdated. This term should not be used in the context of the present draft conclusions and be replaced with “community of nations” as contained in the International Covenant on Civil and Political Rights.

11. We appreciate Special Rapporteur’s view indicating that a definition of general principles of law could be useful to clarify the scope of the Commission’s work on the topic and suggesting that the Commission could consider such a definition after addressing the functions of general principles of law.

12. Regarding the identification of general principles of law derived from national legal systems, as reflected in draft conclusion 4, we do agree that analysis should be done in two steps: the determination that a principle was common to the principal legal systems of the world, on the one hand; and the ascertainment of the transposition of said principle to the international legal system, on the other.

Madam Chair

13. My delegation looks forward with interest to the future work on the question of the functions of general principles of law and their relationship with norms from other sources of international law.

Thank you Madam Chair.