



INDIA
भारत

STATEMENT BY

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ON

AGENDA ITEM 81

**REPORT OF THE INTERNATIONAL LAW COMMISSION OF ITS
SIXTY-NINTH SESSION – CLUSTER-III**

VIII: PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW

IX: SUCCESSION OF STATES IN RESPECT OF STATE RESPONSIBILITY

**X: PROTECTION OF THE ENVIRONMENT IN RELATION TO ARMED
CONFLICTS**

SIXTH COMMITTEE

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Mr. Chairman,

Among the topics of Cluster 3, our focus would be on the topics: Peremptory norms of general international law (*jus cogens*) and; Succession of States in respect of State responsibility.

Mr. Chairman,

I would like to commend the Special Rapporteur, Mr. Dire Tladi for his second report on the topic *jus cogens*, which is now re-titled as 'Peremptory norms of general international law (*jus cogens*)'. The report seeks to set out the criteria for the identification of peremptory norms (*jus cogens*). We attach importance to furthering work on this topic.

We agree, in general with the Special Rapporteur's understanding that Article 53 of the Vienna Convention on the Law of Treaties, 1969 is the starting point for identifying the criteria of *jus cogens*. The customary international law is the first step to search the common basis for the formation of *jus cogens* norms and the norms should have developed to a sufficient degree in all three sources of law, i.e., custom, treaties and general principles of law. All these sources have important role with regard to the identification of *jus cogens* as a norm.

Mr. Chairman,

We took note of Draft conclusions 4 to 9 presented by the Special Rapporteur which *inter alia* concerns the criteria for *jus cogens*; acceptance and recognition by the international community and the evidence for such acceptance and recognition. Once the drafting related formalities and consequently the debate in plenary of the Commission is completed States including ours would be in a position to comment thereupon. Also, we look forward to the outcome of the envisaged future work concerning the concept of *jus cogens* including the effects and consequences; and the illustrative list of *jus cogens* norms.

Mr. Chairman,

Turning to the new topic 'Succession of States in respect of State responsibility' included, during the current session, in the programme of work of the Commission, we congratulate Mr. Pavel Šturma, assuming the position as

Special Rapporteur for the topic, and appreciate the efforts for producing his first report.

Mr. Chairman,

The Commission has earlier dealt with the subject of succession in different contexts and the State responsibility as well. The Special Rapporteur has, in his first report, proposed four draft articles. The proposed draft article 1 reflects on the scope of the topic, and relates the subject matter and context of the topic to the responsibility of States for internationally wrongful acts.

Mr. Chairman,

It has been seen that the principle of 'responsibility' which would hold a state or organization responsible for the commission of an internationally wrongful act, was not favoured to be a part of succession in earlier attempts. For instance, in 1963, Mr. Manfred Lachs, the Chairman of the Sub-Committee on Succession of States and Governments of the Commission, proposed including succession in respect of responsibility for torts as one of possible subtopics to be examined in relation to the work of the Commission on the question of succession of States.

Similarly, the 1998 report of the Special Rapporteur, Mr. James Crawford on state responsibility, indicated about a widely held view that a new State does not, in general, succeed to any State responsibility of the Predecessor State. The Commission's commentary to the 2001 draft articles on responsibility of States for internationally wrongful acts took a more nuanced view stating: "In the context of State succession, it is 'unclear' whether a new State succeeds to any State responsibility of the Predecessor State with respect to its territory".

Mr. Chairman,

We would like however, to support the approach of examining the question of whether there are rules of international law governing both the transfer of obligations and the transfer of rights arising from international responsibility of States for internationally wrongful acts.

Mr. Chairman,

Even as we consider that the topic at hand deals with a complex and sensitive subject, we support the continuing work of the Commission. As the practice of States on the topic is limited or still evolving, we believe more time and an in-depth study would be required for providing detailed comments. We

look forward with interest the second report of the Special Rapporteur which would address the issues of transfer of the obligations arising from the internationally wrongful acts of the Predecessor State. It should distinguish cases where the original State has disappeared (in the case of dissolution and unification) and cases where the Predecessor State remains (territorial transfer, secession and newly independent States).

I Thank you Mr.Chairman.
