



**PERMANENT MISSION OF CUBA TO THE UNITED NATIONS**  
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**STATEMENT BY THE DELEGATION OF CUBA UNDER ITEM "THE SUCCESSION OF STATES IN RESPECT OF THE RESPONSIBILITY OF THE STATE" AND "GENERAL PRINCIPLES OF LAW"- CLUSTER III**

**New York, November 5<sup>th</sup>, 2019**

Mr. Chairman,

The question of the succession of States in respect of State responsibility is of utmost importance for the continuity of the work on the progressive codification of International Law.

In this regard, we appreciate the preparation of the Reports of the Special Rapporteur on the topic and commend the work carried out by the International Law Commission in submitting a draft articles on the "Succession of States in respect of State responsibility".

Cuba considers that the problems of State responsibility in cases of succession should be assessed in the light of the articles already codified by the International Law Commission relating to the State responsibility for internationally wrongful acts.

We understand that there is a scantiness of State practice on the succession of States in respect of State responsibility. In this connection, it would seem that the available practice of States is heterogeneous, context-dependent and marked by political interests; all of which makes it difficult to establish a position from the legal perspective.

We emphasize that neither would it seem that there are rulings of national and international courts and tribunals that contribute decisively to the development of the topic.

Mr. Chairman,

Cuba attaches great importance to the establishment of a general underlying rule applicable to the succession of States in respect of the State responsibility, according to which the latter is not automatically transferred to the successor State, except in certain circumstances.

We consider it prudent and necessary that attempts be made to clarify to what extent each of the draft articles will constitute a case of progressive development or codification of International Law.

We advocate and urge that the consistency of the work of the Commission with the work already carried out be kept, in particular, with the articles on the responsibility of States for internationally wrongful acts, both in terms of terminology and substance.

We highlight the incorporation into paragraph 2 of draft article 1 presented by the Special Rapporteur in his first report on the topic relative to the subsidiarity of the draft articles, which will be applied in the absence of agreement between the parties.

Mr. Chairman,

Cuba considers it necessary to study exhaustively the issues regarding responsibility, taking into account each specific type of succession. We suggest that the Commission clarify whether *lex data* or *lex ferenda* is being established in these draft articles that it is elaborating.

We believe that it is too early to make a decision on the final form of the Commission's work on this topic, a decision that can be made at a subsequent stage and depending on the evolution of the topic.

Mr. Chairman,

We stress the importance of the topic "General Principles of Law" for the work of the International Law Commission, the Sixth Committee of the United Nations General Assembly and for the work of international courts and tribunals.

This is the only source of law that has not been discussed by the Commission. The examination of the topic would, therefore, be the next logical step, following the Commission's work on the law of treaties, customary international law and *jus cogens*.

Although rapporteur Vázquez Bermúdez's first report is preliminary and introductory in nature, it may help to lay the foundation for the future work of the Commission on this topic, as well as to seek the views of the members of the Commission and States in this regard. This work could provide a broad overview of the three main sources of international law.

Given the importance of this topic, Cuba is following up the Commission's debates on this issue, as well as any exchanges that may take place on the subject during the current session of the General Assembly.

We believe that the general principles of law could fill the gaps existing in the conventional or customary law.

Cuba views positively that some of the aspects presented in the first report of rapporteur Vázquez Bermúdez enjoy a common understanding among the experts of the Commission. We highlight, for example, the legal nature of the general principles of law as a source of international law, the relationship of the general principles of law with other sources of international law, especially customary law, and the need to identify the general principles of law.

We take note of the common understanding of the Commission's experts in relation to the fact the general principles of international law comprise the legal principles that are common to national laws.

Mr. Chairman,

We welcome the agreement of the Commission to replace the term "civilized nations". That term has a colonialist connotation, which does not fit in the current system of international relations, based on the sovereign equality among States.

Cuba shares the view that possible conclusions with commentaries could contribute to guide States, international organizations, courts, tribunals and other entities that use the general principles of law as a source of international law.

Likewise, in other core issues more analysis and discussions are needed to arrive at possible consensus or common understandings. For example, with regard to the general principles of law outside the awards of the International Court of Justice and the possibility that the general principles of law derive from international law. In this endeavor, the contribution of international organizations, States and tribunals may be useful.

Despite a significant number of references made to the general principles of law in various areas of international law, the methodology for identifying those principles remains unclear.

We call upon the Commission to continue discussions to determine whether those principles inherent to the international law could also be considered as general principles of law.

We consider that although the general principles of law constitute a subsidiary source, they have an indubitable autonomous character, since the very moment they acquire their own validity and have been mentioned separately and explicitly by article 38 of the Statute of the International Court of Justice.

Mr. Chairman,

Allow me to address an issue of particular importance to my country. It is the so-called "responsibility to protect". It would be a mistake to establish the concept of "responsibility to protect" as a general principle of law. This "responsibility" is far from becoming a principle of International Law. It is only a concept whose characteristics, rules of application and evaluation mechanisms are far from being defined and agreed.

Cuba reiterates that the so-called "responsibility to protect" continues to raise serious concerns to many countries, particularly small and developing countries, due to the lack of consensus and definitions on various elements of this concept, which has been and can continue to be easily manipulated for political purposes.

In this respect, it is inappropriate to delve further into the concept of "responsibility to protect" without there being a consensus on its scope, purposes and implications, which resolves differences of interpretation, guarantees its universal recognition and acceptance.

Mr. Chairman,

On the other hand, Cuba considers it necessary that in future reports the Commission should examine in greater depth the relationship between the general principles of law and customary international law, which is sometimes described as unclear. It should not be overlooked that a rule of customary international law requires the existence of a "general practice accepted as law" (accompanied by an *opinio iuris*), while a general principle of law should be "recognized" by States, suggesting that these two sources are different and should not be confused.

Another important issue is the relationship of the general principles of law with other main sources of international law such as treaties. In this regard, we welcome the fact that the Rapporteur has envisaged to include that issue in the 2020 report.

We also note the intention to include in the 2021 report the issue of the "recognition" requirement. That report could also address the possibility of establishing general principles of law with a scope of bilateral application.

Finally, Cuba expresses its willingness to continue to contribute to this process, including its response to the questionnaire that the Commission will send to seek the views of States on the recognition of the general principles of law in the national legal order.

Thank you very much.