

Islamic Republic of I R A N

Permanent Mission to the United Nations

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Statement by

Mr. Mohsen Sharifi, Representative of the Islamic Republic of Iran before
The Sixth Committee of the 74rd Session of the UN General Assembly
On Report of the International Law Commission on the Work of its seventy first session
(Agenda Item 82)
Cluster III

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

In the name of God, the Most Compassionate, the Most Merciful

Mr. Chairman,

My delegation would like to thank the Special Rapporteur, Mr. Marcelo Vazquez-Bermudez, for preparation of his first report on the “**General principles of law**”, and would like to make the following comments and observations:

With respect to the structure of the report, we note its preliminary and introductory nature and that it is premature, at this stage, to enter into drafting exercise on the substantial parts of the topic, especially on the origins of general principles of law which should be done after clarifying the concept and its scope and receiving comments and observations of States.

On the scope of the report, we are of the view that the report shall be in line with Article 38 (1) (c) of the Statute of International Court of Justice which has limited the general principles of law to principles recognized by civilized nations, i.e. the States. Thus, Article 38 (1) (c), by using term “civilized nations” and as conceivable from *travaux preparatoire* of the Statute in 1920, have confined general principles to those principles of law crystalized as a result of the contemplation of the legal experiences of different legal systems. In other words, they could be understood as essential legal principles that are common to all civilized nations. It should also take stock of the work and jurisprudence of international courts in making reference to the General Principles which show that these judicial bodies often deploy the widely accepted the general principles of national legal systems.

With regard to the relationship between general principles of law and other sources of international law, we consider general principles as an autonomous source of international law. General principle of law as an independent source necessitates that the judges of international courts should avoid in acting as a legislator. Rather, they should adjudicate the case through the assistance of the general principles of law. In other words, these principles of law avoid *non-liquet* even when there is no law or the existing laws are unclear. At the same time, the general principles of law as one of the main sources of international law should not be regarded on a hierarchical order as if they are subsidiary of other sources namely treaties and international customary rules.

With respect to the elements in the concept of General Principles of Law, we concur with the Special Rapporteur that Article 38 (1) (c), of the ICJ Statute should be read as “general principles of law recognized by States”. In the same vein, we are of the view that in light of the fundamental principle of sovereign equality of States, the term “civilized nations” is inappropriate and nowadays general principles of law represent principles accepted by States. To that end, an inclusive process for the identification and recognition of general principles of law is of high importance, as a result of which all legal systems contribute to this process in a balanced manner.

On *draft conclusion 3(b)*, which refers to general principles formed within the international law, we are not convinced that such principles or rules are a category of general principles of law as embodied in Article 38 (1)(c) of the ICJ Statute. Moreover, principles formed within international law are generally come to existence through the process of development of customary international law. In this regard, it should be underlined that the declaration on principles of international law concerning friendly relations and cooperation among states in accordance with the charter of United Nations was adopted by the General Assembly on 24 October 1970, have already provide states with general principles formed within international law.

Finally, we are of the view that the Special Rapporteur should be cautious and avoid unintended consequences of extension of the scope of the topic as well as mixing up of the general principles of law with other sources of international law, namely, customary international rules. Additionally, it is premature to determine different types of general principles of law, before defining the criteria of recognition and the rules pertinent to the identification of general principles.

Mr. Chairman,

Turning to the topic “Succession of States in respect of State responsibility”, I would like to thank the Special Rapporteur, Mr. Pavel Sturma, for preparation of third report on the topic. I will make some comments on the topic as well as the report.

First of all, we admit the subsidiary nature of draft articles and the priority to be given to agreements between the States concerned, as has been highlighted in draft article 1(2), which provisionally has been adopted by the Drafting Committee. At the same time, we are of the view that the proposed *lex ferenda* in framework of the draft articles should be based on solid grounds and not depend on policy preferences. In addition, we reiterate that, for the purpose of the

present topic, only those agreements that are concluded between States under the applicable rules of international law on treaties and after the date of succession, could be addressed. We also believe that the proposed draft articles should be compatible with the articles on responsibility of States for internationally wrongful acts.

Furthermore, it goes without saying that the draft articles of succession of States in respect of State responsibility does not affect the specific situation of creation of states in territories under foreign occupation. The situation of these States is comparable to those countries that the theory of *tabula rasa* (blank slate) is applied to them, unless, in exceptional conditions the new State decides in a different way in its own discretion. In case of illegal protracted foreign occupation, any responsibility arising from wrongful act of occupying power will be continuously on the shoulder of the occupier and not on the Successor State, even after termination of the occupation. This is inferred from a recognized principle of international law, namely, "*ex injuria jus non oritur*".

With respect to the possibility to claim reparation for injury resulting from internationally wrongful acts, we agree with the Special Rapporteur on the broad distinction between cases of succession of States where the Predecessor State continued to exist and where it ceased to exist. Moreover, merging specific categories of succession of States in draft article 12 in order to avoid unnecessary repetitions of identical substantive provisions should not change the substance of provisions concerning a specific category of succession.

With regard to the 2015 resolution of Institute of International Law on "State succession in matters of international responsibility", we are of the view that the Special Rapporteur should be Cautious for over-reliance on it and particularly the Special Rapporteur should not be afraid to take the different approaches from the Institute, if doing so would serve well-grounded purposes with respect to the current topic.

On draft article 15, while we consider its conformity with the relevant 2006 Commission's articles on diplomatic protection, we believe that the approach of Special Rapporteur to allow an exception to the principle of continuous nationality in cases of succession of States to avoid situations in which an individual lacked protection, should be limited to the situation of imposing nationality. Thus, we agree with members of the Commission that draft article 15, should include the safeguards intending to avoid abuses and prevent "nationality shopping" if the rule of continuous nationality was lifted in an exceptional case.

Lastly, on the final form of the Commission's work on the topic and having in mind the previous works of the Commission on the related topic including the 1978 Vienna Convention and 1983 Vienna Convention, it seems that the ILC's work on the topic has not yet received widespread endorsement by States and states concerned have preferred to settle their disputes regarding succession through bilateral agreements. In this context the work of the Committee could be considered as a guideline in this process.

I thank you Mr. Chairman.