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**Report of the International Law Commission
(71st Session, A/74/10)**

*Chapter VII – Succession of States in respect of State responsibility
Chapter IX – General principles of law*

**Speech delivered by Ms. Alis Lungu
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Permanent Mission of Romania to the United Nations
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Chapter VII – Succession of States in respect of State responsibility

We thank the Special Rapporteur (SR), Mr. Pavel Sturma, for his third report. The question of State succession to responsibility remains highly controversial and very much open to study, as there is very little State practice relevant for it.

Against this backdrop, we commend the SR's effort to survey the relevant State practice and jurisprudence of international courts and tribunals. We encourage him to continue and further deepen this methodological approach and to rely less on academic works or the previous work of the Institute of the International Law, heavily relied on so far in an effort to compensate the scarcity of State practice.

We so far agree with the basic premises on which the draft articles build upon: the subsidiary nature of the draft articles (which should apply in absence of a different solution agreed in between the concerned States) and the general rule of non-succession.

We consider, at the same time, that more work needs to be done to ensure consistency in between these draft articles and the previous work of the ILC in relation to state responsibility and the diplomatic protection. In particular we would caution against the use of the concept of "injury" in the draft articles considering that the concept is not used in the context of draft article on State responsibility for internationally wrongful acts which operates with the concept of *wrongful acts* and not of *damage/injury* as trigger of State responsibility.

In connection with the residual nature of draft articles under scrutiny we see merits in addressing in a more detail the issue of special agreements or *ex gratia* payments by States and their impact on the full reparation principle.

At the same time, we acknowledge the flexible stance of the SR on the "clean slate" rule, particularly in situations where the predecessor State continued to exist. Yet, we find the need of more clarity on how such an approach would deviate from the general rule of non-succession.

With regard to the outcome of the topic, we agree that the Commission should decide on the most suitable option at a later stage, especially as the current discussions seem to indicate that *draft articles* are not the most appropriate avenue. The draft articles so far debated and drafted lack normativity since they do not include rights and obligations – which are the essence of a treaty – but rather options and possibilities (see the frequent use of "may" and no use of "shall"). Perhaps *draft principles* or *draft guidelines* would be a more adequate outcome in relation to this topic.

Moreover, on the title of the topic, while we respect the SR's preference to return to this question after the provisional adoption of all the draft articles, we still support the change of the current title which

may erroneously suggest that a successor state automatically succeeds into the responsibility incurred by a predecessor State. Some good alternative proposals have already been advanced in this regard.

In conclusion, we deem necessary that the ILC proceed on this topic with undue haste and examine all issues in detail and taking into account existing State practice, especially given that the exercise pertains indeed more, if at all, to progressive development of international law.

Chapter IX – General principles of law

My delegation welcomes the first report on *General principles of law* prepared by Mr. Marcelo Vazquez-Bermudez and the discussions it prompted in the ILC. We are in agreement with the planned work to be undertaken further in relation to this topic and we consider of utmost relevance the issue of identification of general principles of law. In relation with this latter mentioned aspect this delegation finds *recognition* as being essential for the existence of a *general principle of law* and supports further study in relation to this particular element.

While we are in agreement that the general principles of law are *supplementary* sources of international law, we aim, in the context of the analysis on this topic, at an examination of the relationship between general principles of law, the fundamental principles of international law as well as the principles regulating the various branches of international law, as all of them form a system of principles of international law which cannot be underscored.

Our remarks rest at this point for the moment, while we express our confidence that the study of this particular topic will provide useful guidance to States on the identification and application of the *general principles of law*.

[Closing remarks]

This being the last intervention on behalf of Romania on this year's ILC report, I would like to extend once more this delegation's appreciation for the work undertaken by the ILC members and for the good quality of the report which prompted rich and valuable discussions in the 6 Committee.

Thank you