



**PERMANENT MISSION OF THE REPUBLIC OF  
SIERRA LEONE TO THE UNITED NATIONS**

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STATEMENT

by

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at the 74<sup>th</sup> Session of the United Nations General Assembly

Agenda Item 79:

**“Report of the International Law Commission  
on the work of its seventy-first session”**

**Cluster III**

**Chapters VII and IX**

**Succession of States in respect of State responsibility**

**General Principles of Law**

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*Check Against Delivery*

Chair,

For our last intervention on agenda item 79: “*Report of the International Law Commission on the work of its seventy-first session,*” the Republic of Sierra Leone would like to offer some initial remarks on the two Cluster III topics: (1) “Succession of States in respect of State responsibility” and (2) “General Principles of Law.”

On ‘**Succession of States in respect of State responsibility**’, Sierra Leone thanks the special rapporteur, **Mr. Pavel Šturma** of the Czech Republic, for his third report on this topic and for all his outstanding efforts.

My delegation noted that the ILC completed its work on the Responsibility of States for internationally wrongful acts in 2001. However, as confirmed by the syllabus for this topic annexed to the ILC report on the work of its sixty-eight session (2016), questions were left open regarding succession, in particular, where a succession of States occurs after the commission of an internationally wrongful act. The issue of succession in relation to State responsibility raises complex legal questions about the circumstances when a successor State may be found responsible for an internationally wrongful act of its predecessor. Therefore, although we have some doubt about the sufficiency of State practice to guide this topic especially also given that succession solutions tend to be political, diverse and context-specific, this study could still serve to usefully complement the ILC’s earlier work on succession in respect of treaties, State property, archives and debts and nationality of natural persons.

Second, on the substance, Sierra Leone welcomes the provisional adoption of draft articles 1, 2 and 5 for this topic. We also appreciate the Commission’s timely submission of commentaries explaining these provisions. Following this established ILC practice on this topic is welcome, as it enables States to comment and for the Commission to take appropriate State views into account.

On the substance of draft article 1, delineating the scope of the topic, we agree that the draft articles should only apply to the legal effects of a succession in respect of responsibility for internationally wrongful acts (paragraph 1). We also appreciate the inclusion of a new paragraph 2. The latter rightly underlines the subsidiary and residual nature of the draft articles. States must necessarily enjoy a wide margin of discretion in this area. They may even consent to exclude ordinary rules of responsibility to arrive at a mutually agreed solution.

In our view, in as much as we appreciate what we have in the present report, the ILC may wish to consider expanding upon the commentary to draft article 1. For instance, it might be useful to further clarify the relationship between the current draft articles and the 2001 State responsibility articles and perhaps even the relationship of the current topic to the prior outcomes on succession. The Commission might also furnish examples of the types of means deployed to arrive at the different solutions contemplated. These include pacific means of dispute settlement such as negotiation, which would presumably be more common, but could also take other forms such as enquiry, mediation, conciliation, arbitration, judicial settlement, resort to

regional agencies or arrangements, or other peaceful means of their own choice, as contemplated by Article 33, paragraph 1, of the Charter of the United Nations.

Draft article 5 clarifies that the articles apply only to the effects of a succession of States occurring in conformity with international law, and in particular, the international law principles embodied in the Charter of the United Nations. This article is based on Articles 6 and 3 respectively of the 1978 and 1983 Vienna Conventions. We agree that this provision should not be read as giving any advantage to a State violating international law through, for example, illegal succession or involving the unlawful uses of force to violate the territorial integrity of another State. At the same time, it might be useful for the commentary to explain more how this provisional draft article can assist States in the more difficult cases belonging to the so-called “grey” or “neutral” zone discussed at paragraph 228 of the 2018 ILC report.

Third, we also generally support the special rapporteur’s flexible approach in relation to the general rule of non-succession. We will not adopt a firm position at this stage, as we would prefer to see the work on this study develop further before doing so.

Fourth, Sierra Leone took note of the ILC debate on the potential final outcome of the work on the topic. At this early stage of the study, such a decision to change the current form of “draft articles” would seem premature. Yet, in relation to a topic such as this where State practice seems scarce and sensitive, it might be beneficial for the ILC to consider a softer form that acknowledges the need for States to have considerable flexibility to politically resolve succession problems. From that perspective, in our preliminary view, either draft guidelines or draft conclusions may be worthy of future consideration.

Lastly, on the debate about renaming the current topic, my delegation noted the discussion at paragraphs 93 and 114 of Chapter VII of the 2019 ILC report. We believe that the current title appropriately reflects the scope. We therefore support the special rapporteur’s suggestion for the Commission to return to the issue of title at a later stage, if necessary, possibly after the provisional adoption of all the draft articles upon first reading.

**Chair,**

**On ‘General principles of law’,** Allow us to now offer some brief remarks on the topic “General principles of law.”

To begin, my delegation extends our gratitude to the special rapporteur, **Ambassador Marcelo Vazquez Bermudez of Ecuador**, for his first report on general principles of law. Sierra Leone concurs that the ILC’s work on this topic should seek to clarify the legal nature of general principles of law as a source of international law, the origins of general principles of law, their functions, the relationship between general principles of law and other sources of international law, as well as the method for identifying general principles of law. The Commission could provide useful illustrations of widely accepted general principles of law derived from national or international legal system, but as a methodological matter, it might be wiser to avoid drawing

up a list of substantive general principles of law. Such an approach would be unsound in relation to the whole field of international law. It could also take the ILC many years, if not decades.

Second, Sierra Leone takes this opportunity to underscore the importance of this topic. In our view, as also confirmed by the speech of President Judge Yusuf of the International Court of Justice before this committee at the end of last week, general principles of law are an essential albeit “unwritten” source of international law, in line with Article 38, paragraph 1(c), of the Statute of the International Court of Justice. They, along with “international conventions” and “international custom, as evidence of general practice accepted by law”, form part of the primary sources of international law. Even though general principles have not been used by the ICJ to resolve specific disputes, between States, they play several vital functions in international law depending on the field in question. Among other things, general principles of law serve as sources of binding legal standards; they act as gap fillers; but also, as ways to promote greater coherence and to uphold stability in the international legal order.

In some areas of international law, such as international criminal law, general principles of law derived from the national and international law are particularly important. The importance of general principles of law is recognised by State practice by, for instance, Article 21, paragraph 1, of the 1998 Statute of the International Criminal Court (“ICC”). Article 21 directs the ICC to apply general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of the States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with the ICC Statute and with international law and internationally recognized norms and standards. The statutes of the Security Council created ad hoc international criminal tribunals, which preceded the ICC, did not include a provision similar to Article 21 of the ICC Statute. Yet, a similar reliance on general principles of criminal law in case adjudication is extensively reflected in their caselaw. The situation was somewhat similar in the practice of the Special Court for Sierra Leone.

With the general principles of law study fully underway, for which we applaud the Commission, Sierra Leone requests the ILC to consider going even further so that it might complete its work on sources of international law in Article 38 of the ICJ Statute. We recall the criteria agreed by the ILC at its fiftieth session (1998) to guide selection of new topics for the long-term programme of work, namely, that topics must reflect the needs of States in respect of the progressive development of international law and its codification; should be at a sufficiently advanced stage in terms of State practice; and that they should be concrete and feasible. In this regard, the Commission should consider a study of the last enumerated “source” of international law in Article 38(1)(d), namely: “judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.” Sierra Leone believes that the proposed topic on subsidiary means meets the ILC’s topic selection criteria.

We suggest this topic also bearing in mind the central and unifying role of the Commission in studying general international law questions. Moreover, given the overlaps and

relationship between paragraphs 1(c) and paragraph 1(d) of Article 38 of the Statute of the ICJ, it would be useful for the Commission to take up subsidiary means in the near future. This permits relationships between the general principles of law and other sources of international law to be fully explored by the ILC in a coherent and consistent manner. In this regard, we note that Ambassador Bermudez's first report on general principles of law mentioned potential overlaps at paragraphs 32 and 150. So did Sir Michael Wood in his early reports as special rapporteur for the topic identification of customary international law.

Third, Sierra Leone agrees with the three inter-related elements approach discussed in the first report and at paragraph 217 of the 2019 ILC report. We further agree that, in order to identify general principles of law derived from national legal systems, a two-step methodology may be required. First, identifying a principle common to a majority of national legal systems. Second, determining whether that principle is applicable in the international legal system. We also support the ILC members encouraging future rapporteur reports to distinguish between "general principles of law" and "general principles of international law" as well as between "principles" and "rules" or "norms."

Finally, on the colonial era language of *civilized* and by implication *uncivilized* nations in Article 38(1) of the ICJ Statute, Sierra Leone is pleased with the seeming consensus of the Commission that these pejorative terms from the 1920s have no place in a multicultural and universal international law. Though the language seems embedded in Article 38 of the ICJ Statute, until it is amended, whenever required for the purpose of this ILC project, a reference to alternate language similar to that found in Article 15(2) of the International Covenant on Civil and Political Rights: "general principles of law recognized by the community of nations" should be preferred. Another formulation such as general principles of law derived from the main forms of civilization and of the principal legal systems of the world could also be considered. The latter phraseology finds inspiration from Article 8 of the Statute of the ILC.

**Chair,**

To conclude, Sierra Leone would like to thank the ILC, its chair, his colleagues in the Bureau and all its special rapporteurs and other members for their hard work. We further commend the Commission for the progress accomplished on Succession of States in respect of State responsibility as well as on General principles of law. Allow us to once more warmly congratulate the Commission and its special rapporteurs for all the excellent results achieved during the seventy-first session, especially on the second and first reading topics of crimes against humanity, peremptory norms of general international law (*jus cogens*) and protection of the environment in relation to armed conflicts.

**Thank you for your kind attention.**