



PERMANENT MISSION OF ROMANIA
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Sixth Committee**

Agenda item 82

**Report of the International Law Commission
(72nd Session, A/76/10)**

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

**Speech delivered by Ms. Alis Lungu
Second Secretary
Permanent Mission of Romania to the United Nations
New York, 3 November 2021**

Madam Chair,

I will focus my statement on the two topics included for consideration under Cluster III of the Report of the International Law Commission.

Chapter VII – Succession of States in respect of State responsibility

We thank the Special Rapporteur, Mr. Pavel Sturma, for his fourth 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.

In relation to this topic, we thank the Special Rapporteur for his dedication and commitment to this subject matter and for the progress made during the last session of the International Law Commission.

Although we hear the Special Rapporteur when he argues that this topic represents a continuation of the work on State succession, we fail to see the normative character of the proposed draft articles. Many of the draft articles are an application of the customary law rules on state responsibility for internationally wrongful acts to the particular situation of state succession. We remain unconvinced of the need to regulate in this specific field.

One further argument in this respect would be that the aspects resulting from state succession, including in terms of sharing of rights and obligations, are the object of specific agreements convened between the concerned States. These agreements have nevertheless priority over the draft articles, which remain subsidiary in nature and could only become relevant in absence of a specific agreement. This point was made as well by the Special Rapporteur in his report.

At the same time, my delegation reminds of the non-existence of automatic succession to State responsibility as a rule and encourages the Special Rapporteur to revise the text in order to ensure that a consistent approach in relation to this aspect is maintained in the draft articles as well as in the commentaries to them.

My delegation reserves further comments on this topic pending its additional consideration by the Commission.

Chapter VIII – General principles of law

My delegation welcomes the second report on General principles of law prepared by Mr. Marcelo Vazquez-Bermudez and the discussions in the International Law Commission related to it.

As a first remark, we emphasise that we do share the view that the general principles of law as a source of international law could only relate to those general principles derived within national legal systems. Therefore, we do not encourage the inclusion of a study in relation to potential general principles of law formed within the international legal system, as they pertain to conventional or customary international law. It is important not to conflate and confuse identification of general principles of law with identification of customary international law.

Otherwise, we concur with the Special Rapporteur and the Commission in what concerns the method of identifying the general principles of law derived from national legal systems (the two-step approach), as well as to the general reference to “community of nations” to replace the reference to “civilized nations” in art. 38 para 1 (c) of the Statute of the International Court of Justice.

We further agree that the study should include references to national jurisprudence as a means for identifying general principles of law, while we do not see that the teachings of scholars might serve the same objective, as they cannot be relied upon for purposes of the determination of general principles of law.

With these remarks, I conclude Romania’s intervention on Cluster III topics.

Since this is the last intervention on behalf of Romania on this year’s Report of the International Law Commission, I would like to extend once more this delegation’s appreciation for the work undertaken by the Commission’s members and for the good quality of the report, which prompted rich and valuable discussions in the Sixth Committee.

Thank you!