SLOVENIA

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STATEMENT

BY

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at the Permanent Mission of Slovenia to the United Nations

Agenda item 82: Report of the International Law Commission on the work of its seventy-second session

Cluster III:

Chapter VII: Succession of States in respect of State responsibility

Chapter VIII: General principles of law

76th Session of the General Assembly

Sixth Committee

New York, November 2021

Madam Chairperson,

Slovenia is pleased to address the Sixth Committee on the work of the International Law Commission within cluster III on the issue of Succession of States in respect of State responsibility and General principles of law.

Madam Chairperson,

In the context of Succession of States in respect of State responsibility, Slovenia as a successor State expresses its appreciation to the Special Rapporteur Mr Pavel Šturma for his extensive efforts on this topic resulting in fourth report (contained in document A/CN.4/743) and would like to make the following observations on this complex nature of the topic.

To begin with, Slovenia agrees that the draft articles in question are of a subsidiary nature to the agreements entered into between the States concerned, as is also the case in other fields of State succession.

Furthermore, Slovenia agrees, as set out in point 155 of this year's report, with the Special Rapporteur that the diverse and context-specific State practice does not point in the direction of "clean slate rule" as mentioned by some members of the Commission. This rule represents an extremely rare exception in the field of State succession, which in practice has been used almost solely for the succession of the so-called "newly independent states" that (re)gained their independence in the process of decolonisation. In addition to that, it has been used for odious debts. Apart from these two cases, the rule represents such a strong deviation from State practice in the field of State succession that it should not be used as one of the options with regard to this topic.

Besides, Slovenia acknowledges that the Special Rapporteur has incorporated institutes of State responsibility in an adequate manner – especially, *"attribution of conduct of an insur-*

rectional or other movement", "acknowledgment and adoption of the act of another state", "acts of continuing nature", and so forth. Having said that, we believe that commentaries to articles should stick more closely to the inter-relatedness of the two fields (State succession and State responsibility) rather than focusing exclusively on State responsibility.

We also agree with the Special Rapporteur on the separate draft articles on different forms of reparations, as there are different requirements and conditions for each of them which can have important consequences for State succession (e.g. while all successor States might be able to provide compensation, not all of them might be able to provide restitution).

In further consideration, the Commission should pay particular attention to the formulations mentioned by the Special Rapporteur in the draft articles (e.g. "in particular circumstances, "may request") as they reflect the complex and specific nature of succession issues.

In conclusion, please allow me to add that the Special Rapporteur in his report emphasised the need to combine codification with the progressive development of international law. Slovenia agrees with this observation and with other international law jurists who argue that it is more important to examine what effects both have together on the Commission's text under consideration rather than determine whether a particular provision belongs only to codification or progressive development.

Madam Chairperson,

Turning to the topic of General Principles of Law, we would first like to thank the Special Rapporteur, Mr Vázquez – Bermúdez, for his comprehensive second report on the processes and mechanisms of identifying the general principles of law. We would like to address two aspects of the report: terminology and the question of general principles of law formed within the international legal system.

As the Special Rapporteur rightly observes, the international law terminology referring to different principles is imprecise, as terms such as principles of international law, general international law, general principles of international law, fundamental principles of international law, etc. are used interchangeably. We also agree that there is a difference between the notion of principles as a source of law and principles as a subcategory of customary or conventional international law; a difference that is not reflected in the terminology used by States. We hope the Commission's efforts will contribute to a clarification and proper use of terminology, since we consider that these two concepts are not at all the same.

Each source of international law mentioned in Article 38 of the ICJ Statute has a certain scope of validity; international conventions apply to States Parties and international customs in principle apply *erga omnes*, except for persistent objectors.

General principles of law were included as a source of international law already in the Statute of Permanent Court of International Justice in 1920, at a time when treaties were few and the most important source was international custom. The purpose was to enable courts to decide cases and avoid *non liquet* situations by taking into account the most basic principles that make the law function as such and are therefore universal and universally applicable.

Since international law was in its infancy, only national law principles were available, which is why the category of general principles of law derived from national legal systems is uncontroversial for States and within the Commission. International law has since developed and spread into new areas and developed its own principles, but they are not of the same nature as the principles mentioned in Article 38/1/c.

Madam Chairperson,

While my delegation allows for a possibility of general principles formed within the international legal system, we believe that any principles identified as general principles of law

should not lose the most basic character – they should enable the law to function as a law, even on international level (i.e. the principle of sovereign equality). Therefore, we advocate for a very cautious approach in identifying these principles and their sources, precisely because of their applicability *erga omnes*.

As has been repeatedly emphasised, identification of a norm as a general principle of law should not create a shortcut to the process of the formation of international custom that has a much higher threshold than "recognition".

Madam Chairperson,

We believe that the Commission should further clarify the use of terminology referring to the different nature of principles applied in international law, the characteristics that the general principles of law should have to qualify as such, and the difference between the formation of international customary law and general principles of law.

Thank you, Madam Chairperson.