



**SLOVAKIA**

**STATEMENT**

**by**

**Mr. Matúš KOŠUTH**  
Legal Adviser

Permanent Mission of the Slovak Republic  
to the United Nations

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Madam / Mr. Chair,

I will address Chapters VII and VIII of the ILC Report, namely the topics “**Succession of States in respect of State responsibility**” and “**General principles of law**”.

Let me turn first to the topic of **Succession of States in respect of State responsibility**. At the outset, I would like to thank Special Rapporteur Professor Pavel Šturma for his fifth report and his work on this topic over the years. I would also like to commend the Commission for the provisional adoption of new draft guidelines [6, 7bis, 10, 10bis, 11, 12, 13, 13bis, 14, 15 and 15bis] together with commentaries thereto.

Before addressing the guidelines, I would like to present a few general observations on the topic and the future program of Commission’s work thereon. In our view, consideration of this important topic by the Commission would help clarify the rules governing legal consequences of internationally wrongful acts committed prior to the date of succession, for which the injured State did not obtain full reparation. We reiterate our appeal that the work of the Commission remains consistent with the Vienna Conventions of 1978 and 1983, as well as the Draft Articles on Nationality of Natural Persons in relation to the Succession of States.

Regarding the final form of the work of the ILC, we note, with some regret, that the work on this topic will continue in the form of draft guidelines instead of draft articles. In line with our previous statements, we had deemed draft articles to be the most appropriate outcome of ILC’s work. However, we understand the form of guidelines as a practical adjustment necessary in order to gain general support for the final outcome.

Turning to the draft guidelines themselves, Slovakia welcomes the work undertaken on the issues associated with a plurality of States. We also consider it important that the Commission upholds the conformity of draft guidelines with the Articles on responsibility of States for internationally wrongful acts. In this context, we would recommend caution against unnecessary duplication. For example, some of the proposed provisions address primarily the situation of an internationally wrongful act of a successor State after the date of succession. Such situation is fully covered by the articles on the responsibility of States.

The utility of some of the draft guidelines [*Guidelines 10, 10bis, 11 and 14*] is further in doubt as they stop short of proposing a specific rule-based solution in different succession scenarios

anticipated by these guidelines. Instead, they merely refer to an agreement between the injured and wrongdoing States. Furthermore, while some of the draft guidelines refer to relevant circumstances that should be taken into consideration when assessing the situation, only a handful of these provide at least a general guidance on what kinds of circumstances should be considered relevant [*Guidelines 11 and 14*].

Concluding our remarks on the topic, we generally agree with the approach adopted by the Commission. However, we believe that the work of the ILC should keep in mind the practical aspects of the work and the ultimate objective of this exercise – to provide sufficiently specific guidance to States. We believe that the outcome of the work on the topic would complement ILC's previous work on related topics.

Madame / Mr. Chair,

Moving to the topic of **General principles of law**, I would like to commend the diligence and efforts of the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, whose third report Commission considered at its recent session. Slovakia takes note of the provisionally adopted draft conclusion 3, 5 and 7 by the Commission. Before providing our comments on these draft conclusions, I wish to make some general remarks on the topic.

The theme of general principles of law undoubtedly generates the interest of scholars. It was, and will continue to be, a subject of a research and academic works. The practical need on international level for analyzing this matter, however, is rather limited. By its nature, the topic is not suitable for progressive development or codification. The question of general principles of law arises primarily for the International Court of Justice and other international judicial instances, as a matter of the interpretation of their respective Statutes and application of the law in the process of adjudication of cases before them. The autonomy of judicial instances dealing with this matter should, therefore be respected.

Turning now to draft conclusion 3, Slovakia notes the caution with which the Commission drafted paragraph b). However, we remain skeptical about the second category of “general principles of law formed within the international legal system”. In our view, general principles of law can only stem from national laws (*foro domestic*) and *per se* represent the higher degree of generalization or abstraction of existing norms and principles of a national legal order, which are common to legal systems of the world. Moreover, the chosen

terminology “*formed within international legal system*” might cause additional confusion in distinction between the general principles of law and treaty or customary rules. We find it difficult to agree with a concept whereby general principles of law would be a third, completely distinct formal source of international law created by States within the international legal framework. We would expect the Commission to provide at least some examples of “general principles of law formed within the international legal system”, which are not at the same time rules of customary international law and/or rules of general international law, together with an explanation how the requirements for identification of such general principles of law, according to the present draft conclusions, were met.

In relation to draft conclusion 5, we reiterate our last year’s comments that a formal transposition is not, from our perspective, a necessary requirement for the existence of a general principle of law. Having said that, Slovakia considers the determination of the existence of a principle common to the various legal systems of the world as the only requirement for identification of a general principle of law. Consequently, we agree with the element of a comparative analysis in order to ascertain recognition of a general principle of law among various legal systems. However, provisions of paragraphs 1 – 3 seem overly prescriptive, instead of being expository, and might not fully reflect the genesis of general principles of law.

Since draft conclusion 7 elaborates further on the category of “general principles of law formed within international legal framework”, our comments must be read in conjunction with the comments made on draft conclusion 3. We note four arguments provided by the Commission in commentaries justifying the existence of this category of general principles of law as well as examples provided in the footnote. We consider these examples to be examples of principles of international law, or in other words, rules of customary or general international law. Moreover, assertion that international legal system must generate general principles of law just because national legal systems do so, seems to be rather simplistic. We feel the same about the argument that *travaux préparatoires* of the ICJ Statute do not exclude the option. Mere non-exclusion cannot prove their existence, rather contrary.

In addition, we consider draft conclusion 7 to be adding further confusion in terms of terminology used. In particular, the recognition of a principle as “intrinsic to the international legal system” would require a closer analysis from two perspectives. First, in terms of the methodology of assessment of principles of international law as intrinsic, and second, in terms of their relationship with the norms *jus cogens* reflecting fundamental values of the

international community. We note that commentaries strive to clarify that the “intrinsic” element should reflect the “compatibility” element of general principles of law derived from national legal systems. If that is the desired meaning, we find it difficult to find any principles of international law that would not be compatible with the international legal system. With respect to paragraph 2, this provision is, in our view, rather speculative. In general, my delegation believes that draft conclusion 7 fully embodies our skepticism towards the second category of general principles of law, and encourages the Commission to abandon this concept together with the respective conclusions.

Before concluding, Madam / Mr. Chair, I wish to present a few remarks also on the third report of the Special Rapporteur. Meanwhile we agree with draft conclusion 10, it seems redundant. Moreover, if read together with draft conclusion 11 and the concept of “general principles of law formed within international legal system”, it might lead to a different conclusion in case of a general principle of law with identical content as a customary rule having status of a *jus cogens* norm. In relation to draft conclusion 13, we agree with the gap filling function of general principles of law as essential. However, we are not convinced about necessity to distinguish between essential and specific functions as contained in draft conclusion 14. Furthermore, taking into account our understanding of general principles of law, we argue that they lack normativity, which remains with norms they are derived or abstracted from. For this reason, my delegation cannot agree with the Special Rapporteur that general principles of law may serve as an independent basis for rights and obligations as contained in paragraph a) of draft conclusion 14.

Concerning future work of the Commission on the topic, Slovakia agrees with the approach of the Special Rapporteur to suggest changes, in his fourth report, that might be made to draft conclusions in light of the debate in the Sixth Committee and of any written observations received from States. We underline the importance to properly clarify ambiguities and controversies rather than rushing towards adopting the set of draft conclusions.

I thank you.