



**Statement**  
**on behalf of the Republic of South Africa**  
**by**  
**Mantsho Annastacia Motsepe**  
**before the Sixth Committee of the 77<sup>th</sup> Session**  
**of the United Nations General Assembly**

**Under Cluster 3**  
***“Succession of States in respect of States  
Responsibility & General Principles of Law”***

**New York**  
**2 November 2022**

**Chairperson**

The South African delegation commends the Commission's decision to include the topic "**Succession of States in respect of State responsibility**" in its programme of work and the appointment of Mr Pavel Šturma as Special Rapporteur in 2017. We also commend the Special Rapporteur for his hard work and contribution to this topic. He has submitted five reports on this topic since its introduction in 2017.

In his fifth report, composed of four parts, the Special Rapporteur provided an updated overview of the work on the topic undertaken thus far, which included a summary of the debate in the Sixth Committee held at the seventy-sixth session of the General Assembly, together with an explanation of the methodology of the report. We welcome the Commission's decision, on the recommendation of the Special Rapporteur, to instruct the Drafting Committee to proceed with the preparation of draft guidelines on the basis of the provisions previously referred to the Drafting Committee (including those provisions provisionally adopted by the Commission at previous sessions), taking into account the debate held in the plenary on the Special Rapporteur's fifth report. This change clearly states that the text is not binding and that the Commission is not aiming to codify existing law but merely to suggest approaches to States.

### **Chairperson**

South Africa also wishes to state that in furthering this topic to finality, it will complement the previous work done by the Commission which resulted in the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts. These Conventions will be of relevance to this topic which was the view of the Secretariat in its memorandum that was submitted to the Commission in 2019. The South African delegation has taken note of the three options that were discussed at the 74<sup>th</sup> sitting of the Commission. The first option was to appoint a new Special Rapporteur to continue the topic; secondly, to discontinue the Commission's work or thirdly, convening a Working Group that will produce a report on the topic. We recommend that the Commission consider this matter carefully, taking into account the views of States, the views of members of the Commission, as well as the number of topics on the agenda.

### **Chairperson**

Let me now turn to the **General Principles of Law**. The South African delegation commends the Commission's decision to include the topic "**General Principles of Law**" in its programme of work and appointed Mr Marcelo Vázquez Bermúdez as Special Rapporteur. The Republic of South Africa would like to thank the Special Rapporteur for his invaluable contribution on this topic. My delegation is also grateful to the Drafting Committee and to the plenary of the Commission for their work. South Africa notes the importance of this topic and we hope that the continued work of the Commission will provide further clarity on general principles of law as a source of international law.

### **Chairperson**

We welcome the adoption of the proposed draft conclusions by the Commission and will address some of the draft conclusions. We welcome the use of the phrase “may be formed” from draft conclusion 3 as appropriate to allow for a degree of flexibility to the provision. With respect to draft conclusion 6, we support the view of some members that the Commission should aim at ensuring a text that avoids creating the impression that transposition to the international legal system is either automatic or that it requires a formal act.

### **Chairperson**

We note the views expressed by some members that general principles of law are used primarily as "gap fillers" when treaties or customary international law does not provide a rule of decision. However, we support the view expressed by some members that the general principles of law do not have a monopoly on filling the gaps in the international legal system. As suggested by scholars that as new treaties and customary law develop to address areas of international concern, the significance of general principles will fade as these gaps in international law are filled and as a result the general principles should not have this monopoly. We also note that the report does not provide an explanation on how the gap-filling role would apply if the Commission concluded that two different categories of general principles existed.

### **In conclusion Chairperson**

We have taken note that the Draft conclusion 7 (identification of general principles of law formed within the international legal system) was provisionally adopted by the Commission with commentaries at the present session. We have also taken note that the Special Rapporteur referred to an alternative formulation for draft conclusion 7, to be considered by the Drafting Committee, seeking to find a common ground in light of the comments made by members in the plenary debate.

**I thank you for your attention.**