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**Report of the International Law Commission**

**Agenda item 77**

**“ILC Cluster III”**

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## **Chapter VII (Succession of States in respect of State responsibility)**

[Mme/Mr] Chair, I would to begin with the topic on Succession of States in respect of State responsibility. We have taken note of the debate in the Commission, particularly regarding the appropriate outcome of the present project, and the decision to change the form of the outcome to draft guidelines rather than draft articles. On that issue my Government would like to reiterate its views previously expressed, that the outcome in the form of draft articles, principles or guidelines is not suitable for the topic of Succession of States in respect of State responsibility and, therefore, my Government does not support it. More generally, my Government takes the view that the Commission may wish to evaluate and reconsider the usefulness and necessity of continuing its work on this topic before taking any further steps, including the appointment of a new Special Rapporteur.

## **Chapter VIII (General principles of law)**

[Mme/Mr] Chair, I now move on to the topic of General Principles of Law. The Netherlands wishes to thank the Special Rapporteur for his third report. As to the categories of general principles of law and its relationship with the other sources of international law, the Netherlands would like to present the following comments and observations.

The Netherlands notes, with satisfaction, that draft conclusion 3 was provisionally adopted by the ILC. Despite the continuing doubts that have been expressed on whether a second category of general principles of law formed within the international legal system does exist, draft conclusion 3 encompasses both categories of general principles of law.

The Netherlands in particular appreciates the acknowledgement, by the Special Rapporteur, of the need to develop a clear methodology to identify general principles of law formed within the international legal system, separate from already existing methodologies to identify other sources of international law. It deserves to be clarified whether general principles of law formed within the international legal order can exist as an individual source of rights and obligations under international law. The Netherlands therefore looks forward to the revisions of the commentary to draft conclusion 7. In the view of the Netherlands, the two requirements as included in draft conclusion 7, requiring an analysis of already existing rules in the international legal system and proof that such principles are intrinsic to the international legal system, are a good basis but need to be further elaborated upon. For instance, and with respect to the second requirement, the Netherlands would appreciate guidance on the defining features of general principles in order to be considered intrinsic.

In this same context, the Netherlands appreciates the analysis of the Special Rapporteur on the possibility of the parallel existence of general principles of law, on the one hand, and conventional and customary rules with the same content, on the other. This would contribute to the understanding of general principles as an individual source of international law, in addition to the other sources also listed in article 38 of the ICJ Statute. We would hence support the view that a general principle of law can transform into a rule of customary or conventional law with the same content and which exists in parallel.

The Netherlands has noted that many members of the Commission have expressed their doubts with respect to draft conclusions 13 and 14 as proposed by the Special Rapporteur in which he describes the functions of general principles of law. The Netherlands shares these doubts.

First, listing the functions of general principles of law seems less relevant for the determination of a methodology for their identification. As to the specific functions included by the Special Rapporteur, draft conclusion 13 seems to imply that the primary function of general principles of law is filling gaps. However, in the view of the Netherlands, the other functions listed in draft conclusion 14 are equally relevant. It is not clear on what basis the functions as outlined in draft conclusion 14 were selected. In addition, the functions ascribed to general principles also seem to apply to the other sources of international law.

According to the Netherlands, general principles of law serve as a reference framework that in particular helps international courts and tribunals as well as states and other subjects of international law to interpret other rules of international law.

Thank you.