

74th Session of the United Nations General Assembly

Sixth Committee

Agenda Item: 79

**“Report Of The International Law Commission on the work of its
Seventy-first Session”**

INDIA STATEMENT

By

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India would like to thank Mr. Pavel Sturma (Czech Republic) Special Rapporteur for introducing the third Report on “Succession of States in respect of State Responsibility”. The complex nature of the work on the topic is evident from the reports so far. The draft articles deal with rules that belong to two areas of international law i.e. the law of state responsibility and the law of succession of States. The adoption of any of the draft articles on this topic shall be in consonance with the relevant international conventions such as 1978 Vienna Convention on Succession of States in respect of Treaties, 1983 Vienna Convention on Succession of States in respect of State property, Archives and Debts, etc.

My delegation takes note of draft articles contained in the third report addressing certain basic issues which *inter alia* include: the form of state

responsibility in respect of succession of States when the predecessor State continues to exist; seeking reparation from the responsible state in case of merger of States; and also seeking reparation from responsible State in case of dissolution. Following the debate in plenary, the Commission decided to refer draft articles X, Y, 12, 13, 14 and 15 to the Drafting Committee.

3. At the outset, we are of the view that the draft Articles 12 to 14 provides for situation where the injured predecessor State may request for reparation for the internationally wrongful act of another state if the predecessor State continues to exist. Similarly, the successor State may also request reparations for internationally wrongful acts of responsible State in case of merging of two or more States. In either case, as provided in draft Articles 12 and 13, the Special Rapporteur needs to identify whether the draft Articles are intended to establish the procedural possibilities of claiming rights or substantive rights and obligations.

Mr. Chairman,

4. Similarly Draft Article 14 also refers to a situation of seeking reparation from responsible State in case of dissolution of States. However, such claims for reparations are expected to take into consideration the link between the consequences of acts and the nationals of successor States on the basis of equitable proportion. Here, my Delegation would like to seek further clarification on how to distinguish the rights of a successor State from the potential right of an individual to claim reparations.

5. As regards Article 15, we suggest that the Special Rapporteur may elaborate further on this issue, taking into consideration the language used in draft Articles on Diplomatic Protection while dealing with the cases of multiple nationality.

Mr. Chairman,

6. We welcome the first report of the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, on “General Principles of Law”. The report proposes three draft conclusions based on the initial assessment of the topic. My delegation encourages the study of other similar works undertaken by the Commission on various topics, such as the law of treaties, responsibilities of States for internationally wrongful acts, fragmentation of international law, and identification of customary international law, which may have direct bearing on the study of the general principles of law.

7. We are of the view that there is no hierarchy among the sources of international law under Article 38 of the Statute of the International Court of Justice. Accordingly, we opine that general principles of law should not be described as a subsidiary source or secondary source. Instead, we suggest considering the term “supplementary source” to qualify the sources of general principles of law.

8. The *travaux préparatoires* of Article 38 of the Statute of the Permanent Court of International Justice may suggest that the inclusion of general principles of law as a source of international law was driven by a concern to

avoid findings of *non liquet*, and to limit judicial discretion in the determination of international law. However, too much of focus on *travaux préparatoires* would narrow the importance of general principles of law and its contemporary relevance in practice. The draft conclusions should focus on the evolution of general principles of law as a source over a period of time, rather than using *travaux préparatoires* for the evolution of general principles of law.

9. As regards the use of the term “civilized nations” under Article 38(1)(c), we agree with the majority view that it is inappropriate and outdated. This term should not be used in the context of the present draft conclusions. We also note that some members have suggested to use the term “community of nations” as contained in Article 15(2) of the International Covenant on Civil and Political Rights. However, we understand that the term used in the Draft conclusion 2, “general principles of law...recognised by States”, is a conscientious attempt of using the terminology in a draft conclusion.

I, thank you Mr. Chairman.