

**Annex – Succession of States in respect of State Responsibility**  
**Analysis of individual member states comments for syllabus**  
**Friday, 14 July 2023**

**Commentary**

It is clear that the rights and obligations triggered by an internationally wrongful act to concern only the state that has committed it. Such rights and obligations are not transferables as a result of state succession as a matter of *lex lata*. (Austria)

The disappearance of a state which has committed a wrongful act should not lead to a situation where such wrongful act remains un-remedied (Austria)

**Guideline 1**

**United Kingdom** reiterates its long-standing position that a cautious approach is needed in a topic such as this. Such State practice that exists, in the form of agreements between the States concerned, must be seen as the product of context-specific negotiations, inevitably combining historical, political, cultural and legal considerations.

**Viet Nam** is of the view that, in the succession of states, priority should be given to the agreements between the States concerned and such succession should be carried out on the basis of committed negotiations, in a free-will manner, and in an appropriate timeframe. From our perspective, automatic succession should not be applied in any case, particularly with respect to rights and obligations arising from a wrongful act of the predecessor States.

**Slovenia** - As already mentioned, Slovenia welcomes the Special Rapporteur's success in finding a balance between the clean slate doctrine and the position on automatic succession. The first is a genuine exception in the field of State succession, even though some would like to present it as a rule. It has been used almost exclusively in cases of decolonisation. On the other hand, automatic succession is a widely accepted rule in other fields of State succession but, of course, has no clear confirmation in the field of State responsibility, as the State practice is relatively scarce.

**Italy** - We strongly support the *lex specialis* principle affirmed in Guideline 1 and share the view expressed in the report's conclusion regarding the priority and the privileged status of international agreements between the States concerned over the present draft guidelines.

**Malaysia** reiterates its agreement with the Special Rapporteur that the draft articles were subsidiary in nature and that priority should be given to agreements between the States concerned.

**Portugal** agrees with the principle, reiterated several times by the Special Rapporteur in his report, that the final product should be considered as subsidiary in nature and that agreements on succession issues between the States concerned take precedence. However, it should be noted that the phenomenon of State succession may be the result of idiosyncratic and complex dynamics, whether historical, social, economic, ideological. In some cases, succession is simply the only solution to address deeper and even more complex problems. This conclusion is not without implications for the question of state responsibility in the case of state succession. Indeed, it justifies the concern that any agreement on the apportionment of international responsibility in such circumstances should be placed in its particular context. This means that it is of utmost importance to ensure that such an agreement actually expresses the free and noncoerced will of the parties. Portugal is aware that this concern is essentially related to the issue of invalidity of treaties, which is dealt with in the Vienna Convention on the Law of Treaties. However, we consider that the rule that agreements concluded by the States concerned take precedence over a possible practice of State succession can only retain its relevance if the aforementioned concern is taken into account at all times.

**Republic of Korea** - Regarding the provisionally adopted Draft Guidelines, my delegation supports the approach taken by the Commission to examine the situation according to the specific categories of State succession

**Singapore** - My delegation has noted the change in form of the Commission's final output on this topic from draft articles to draft guidelines, and the Special Rapporteur's proposed new scheme for the consolidation and restructuring of the previous draft provisions referred to the Drafting Committee. Regardless of the form of the final output, we share the views of others that primacy should be accorded to agreements entered into by the concerned States and that it is important for the output to be concise, balanced and serve as useful practical guidance to States.

### **Automatic transfer to successor state**

**Malaysia** - With regard to Part One of the fifth report on the competing theories of the "clean slate" rule and automatic succession, Malaysia echoes the sentiment of most States that neither the clean slate rule nor automatic succession could be accepted as general rules as there is no conclusiveness of State practice on this issue to warrant either the clean slate rule or automatic succession to prevail over the other.

**Cuba** shares the view that a general underlying guideline applicable to state succession could be established, according to which state responsibility does not automatically transfer to the successor state, except in certain circumstances.

### **Guideline 3**

**Greece** - We concur with the Special Rapporteur's suggestion not to include, in the final draft, articles 3 and 4 on devolution agreements and unilateral declarations respectively, proposed in 2017. The above, at least in their current wording, do not seem to have been tested against the scenario that a third State who has suffered damage from the predecessor State, does not concede to the transfer of the relevant obligations to the successor State by means either of a devolution agreement between the predecessor State and the successor State or of a unilateral declaration to that effect of the successor State.

#### **Guideline 4**

Greece - We concur with the Special Rapporteur's suggestion not to include, in the final draft, articles 3 and 4 on devolution agreements and unilateral declarations respectively, proposed in 2017. The above, at least in their current wording, do not seem to have been tested against the scenario that a third State who has suffered damage from the predecessor State, does not concede to the transfer of the relevant obligations to the successor State by means either of a devolution agreement between the predecessor State and the successor State or of a unilateral declaration to that effect of the successor State.

#### **Guideline 6**

**Malaysia** can support the inclusion of draft guideline 6 as it is in line with the Commission's aim to clarify that succession of States has no impact upon attribution.

**Austria** Draft guideline 6 entitled "No effect upon attribution" indeed provides the core of the entire topic, stating that a succession of states does not have any effect on attribution and therefore, in Austria's view, on the consequences of an internationally wrongful act committed by a predecessor state.

**Estonia** - Regarding the substantive matters, we reiterate our appreciation for the inclusion of draft article 6 on effect upon attribution. We think that even if this provision expresses the basic principle, which is codified in articles on responsibility of States for internationally wrongful acts, it is good to have the clarification in this text as well. We agree as well that it is important, as stated in the commentary to the article, to clarify that the draft article applies only to the effects of a succession of State occurring in conformity with international law. This is important for the sake of clarity and for the delimitation of the scope of draft articles. It is our understanding that the illegal acquisition of the territory (i.e. through illegal annexation) cannot generate the effects of succession between concerned States.

**Czech** Guideline 6 entitled "No effect upon attribution", clarifies an essential aspect of the topic, namely that the internationally wrongful act committed by the predecessor State prior to the date of succession of States remains attributable solely to that State. We support this guideline. At the same time, the mere fact that the succession of States has no impact on the attribution does not preclude, depending on circumstances, participation of the successor State or States in the wiping of injurious consequences of

the predecessor's internationally wrongful act, as it is further clarified in subsequent provisions.

Draft guideline 6 entitled "No effect upon attribution" indeed provides the core of the entire topic, stating that a succession of states does not have any effect on attribution and therefore, in **Austria's** view, on the consequences of an internationally wrongful act committed by a predecessor state.

**Austria** welcomes the attempt to find a soft formulation for draft guideline 10 on uniting of states pursuant to which in such a case an injured state and the successor state to the state which committed an internationally wrongful act "should agree on how to address the injury." The non-attributability of the wrongful act committed by the predecessor state to a successor state implies that the successor state does not have any obligation stemming from the wrongful act. Where it has benefited from it, principles like unjust enrichment may be used in order to address the injury or the successor state may voluntarily consider doing so.

**Belarus** - We share the detailed commentary to **guideline 6**, Absence of effect on attribution, that an internationally wrongful act committed prior to the date of succession remains attributable to the State that committed it. The provision in question seems valuable in view of its relevance to other provisions closely linked to questions of succession of States concerning responsibility for breaches of international law, for instance those having a continuing character or constituting a composite act.

**Austria** - Against this background we are sceptical whether a formulation pursuant to which a successor state and an injured state "should agree on how to address the injury" is indeed excluding a rule of automatic succession or the clean slate principle, as commentary 3 to draft guideline 10 suggests. The need to "address the injury" arises from the commission of a wrongful act under the principles of state responsibility. Thus, to suggest that a successor state should address these issues presupposes that a wrongful act committed by its predecessors somehow imposes obligations on it by way of succession. Similar considerations would be pertinent to other situations of state succession, but we recognise that this forum is not the appropriate one to address all the details.

**Belarus** –By way of continuity of position, we continue to advocate a prudent and balanced approach to the formulation of a presumption of succession when the predecessor State has ceased to exist. We recall that in such a situation it is of paramount importance to take into account all factors, including the circumstances of the termination of the predecessor State, the degree of participation of each of the successor States in the governance of the predecessor State, including in terms of the commission of an internationally wrongful act. Given the complexity of the present topic, and taking into account the fact that questions of succession to responsibility are

resolved on an ad hoc basis, it would seem that individual agreements between the States concerned should take a primary role in the consideration of the draft articles.

**Cameroon** - With regard to draft guideline 6, entitled "No effect on attribution", my delegation takes note of the debate in the Commission, which was worth its weight in gold, on the understanding that it clarifies that an internationally wrongful act occurring before the date of succession remains attributable to the State that committed it. In my delegation's view, this draft guideline is absolutely necessary. While on the whole it sets out the basic principle codified in article 1 of the draft articles on responsibility of States for internationally wrongful acts, my delegation observes that the ILC's clear-cut position on this draft guideline could be more nuanced, as far as the successor State to a treaty is concerned. Indeed, my delegation observes that when a State becomes a party to a treaty by succession, there is an automatic transmission of international responsibility arising from a breach of the treaty committed by the predecessor State before the date of succession. In other words, for my delegation, there is an automatic succession to international responsibility merely because the successor State is now a party to a treaty one of the provisions of which was breached by the predecessor State. In my delegation's view, this is the transmission, together with the treaty, of responsibility. My delegation considers it logical that succession to a treaty on the part of a State also implies succession by that same State to the international responsibility arising from the breach of that treaty. This is undoubtedly the case in situations where there is automatic succession to a treaty. My delegation believes that this is a matter of preserving the maintenance of treaty relations in relation to a given territory and ensuring legal certainty in international relations. My delegation believes that the need for continuity of legal relations, which is at the very heart of the idea of automatic succession, certainly militates in favour of transferring to a successor State the consequences of international responsibility arising from any breach of a treaty. This was the position stated by the UN Commission on Human Rights on 28 November 1994. The *Mechanic, Gabčíkovo-Nagymaros* and the *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide* establish its relevance.

### **Guideline 7**

**Belarus** - In our view, guideline 7 bis "Constructive acts" should be given great importance.

7 bis "Constructed acts", which is intended to develop draft guideline 7 on the succession of State responsibility for acts of a continuing character, providing that the occurrence of a succession of States should not affect the responsibility of the predecessor State for a composite conduct of which the constituent parts are wholly attributable to it.

### **Guideline \*7 and 7 bis**

**Malaysia** - With regard to draft guideline 7 *bis*, Malaysia agrees that the provision on composite acts should be placed next to draft article 7 which had been provisionally adopted in 2019 by the Drafting Committee. Malaysia further considers it is useful to complement to draft article 7 in differentiating composite acts from continuing acts...In general, Malaysia does not have any objection to draft guideline 7 *bis* as Malaysia believes that States are responsible for the consequences of its own act as correctly encapsulated in paragraphs 1 and 2... However, with regard to whether a successor State would be responsible for a wrongful act that commences with the predecessor State and continues with the successor State, Malaysia believes that the provision should be open to further discussion and deliberation as currently, it is dealt with on a case to case basis and there is no clear guidance on the issue. Before the provision is adopted, it must first be determined whether such a composite act is possible under international law.

**Italy** takes note of the scarcity and inconsistency of State practice with reference to particular forms of wrongful conduct, including – inter alia – the actions or omissions defined in aggregate as wrongful, mentioned under Guideline 7 *bis* on composite acts.

**Cameroon** - My delegation welcomes Guidelines 7 and 7 *bis* which follow the arrangement of articles 14 and 15 of the articles on responsibility of States for internationally wrongful acts.

**Czech** Guideline 7*bis* deals with Composite acts. Paragraphs 1 and 2 are confirming the obvious, namely that the predecessor State or, as the case may be, the successor State are each responsible for their own international wrongful conduct consisting of a series of composite acts against another State. The fact that the line of these acts straddle the date of succession does not make these situations distinct and in need of being regulated under the current topic. In each of these cases, all elements of the composite act are attributable to a single wrongdoing State (which existed prior to and continues to exist after the date of State succession). Both situations are, therefore, sufficiently covered by the 2001 Articles on Responsibility of States for Internationally Wrongful Acts (2001 ARSIWA).

The only situation not already covered by the said Articles is envisaged in paragraph 3. It is the case when a series of actions by the predecessor State is followed by series of actions by the successor State and, cumulatively, these actions would constitute a “composite act” *sui generis*. The Commission, however, seems not to find any solution to this problem. As admitted in the commentary, “the inconsistency of the available State practice did not allow a firm conclusion to be drawn as to the content of the law” and paragraph 3 is, therefore, formulated as a “without prejudice” clause. Guideline 7*bis* thus provides only very limited guidance for the solution of the relevant problem which the Commission was able to identify under the theme of “composite acts” and which could arise in the context of succession of States. We therefore doubt whether this guideline is really needed, in its current form.

**Greece** - Turning to draft guidelines and commentaries thereto already provisionally adopted by the Commission, we welcome at first the clarification, in paragraph 3 of the

commentary to Guideline 7, that the term “attribution... of an internationally wrongful act” does not refer to the term “attribution of conduct” to a State as such, the latter being only one of the conditions for a State to incur responsibility, according to article 2(a) of the ILC’s Draft Articles on State Responsibility of 2001.

**Greece** - We also welcome the reformulation of Guideline 7bis on composite acts. On paragraph 6 of the commentary however, we are of the view that the latter should be more clear in providing that the continued application by the successor State of the illegal measures adopted by the predecessor State may be an act attributable directly to the successor State, also in cases where the composite act had already been completed by the predecessor State.

### **Guideline 10**

**Belarus** –We support the commentary to guideline 10, "Uniting of States", in that it is intended to encourage States to find solutions to international responsibility in situations involving the merger of States, offering a degree of flexibility and freedom for States to choose the mechanisms by which they reach agreements. The important message, however, is not only the possibility and fact that a negotiation process can be established between States, but also their highly desirable continuation with the objective of concluding an agreement.

**Cameroon** –My delegation welcomes the efforts made by the ILC on draft Directives 10 and 10 bis which strike a balance between automatic succession and a clean slate. My delegation supports the flexible wording of this Directive which strongly suggests negotiation and gives States the freedom to choose the terms of the agreement. My delegation also welcomes the spirit and the letter of Directive 11 and paragraph 3 of Directive 12 which also suggest negotiation in the case of the dissolution of a State. With this openness to negotiation, the ILC happily aligns itself with the position of the Permanent Court of International Justice as expressed in the Case Concerning Rail Traffic between Lithuania and Poland; it also joins the ICJ in the Case Concerning the Application of the Interim Agreement of 13 September 1995 and the Arbitration Tribunal of the Agreement on German External Debts, in the 1972 case between Greece and the Federal Republic of Germany.

### **Guideline 10bis**

**Belarus** –In the context of the accession of States, we note guideline 10 bis.

"Entry of a State into another State", the provisions of which appear important in view of the presumption that obligations of State A arising from an internationally wrongful act do not automatically pass to another State of which State A has become a party.

**Czech Republic** The common element of guidelines 10, 10bis paragraph 1 and guideline 11, dealing with uniting of States, incorporation of a State into another State and

dissolution of a State respectively, is the idea that the injured State and the successor State should agree on how to address the injury. In our understanding this means that the negotiations (and an agreement resulting thereof) should focus on the modalities of the reparation, namely its forms and eventually (in case of dissolution) its distribution between successor States. However, the very purpose and goal of such negotiations, namely the principle according to which the injurious effects of an internationally wrongful act of the predecessor have to be wiped out, cannot be questioned in such negotiations. In other words, to use those of the commentary, “the provision should not be viewed as an expression of the ‘clean slate’ principle [...], as that would risk leaving the injured State without a remedy.” We still regret that these guidelines themselves, apart from their commentaries, do not provide at least some guidance to the States concerned, which could assist them in their negotiations.

### **Guideline 11**

**Slovenia** - We would especially like to commend the commentaries on Guideline 11 and Guideline 14 (both on Dissolution of a State), which apply the terminology of the Vienna Convention on Succession of States in respect of State Property, Archives and Debts and seek to find a relevant connection between a wrongful act and successor States.

**Slovenia** agrees with the Special Rapporteur that domestic laws should be cited as State practice. As stated by the Special Rapporteur, the report does not claim that they were an expression of a State’s legal conviction that it was fulfilling an obligation under international law. Nevertheless, such acts represent State practice and were driven by the social need to address, in the context of succession of States, the injury for which the predecessor State was responsible.

**Portugal** - Given the scope of Draft Guidelines 11 and 14, there does not appear to be a defensible reason for using different methodologies and terminology in the two Draft Guidelines.

**Belarus** –“Separation of States”, which calls upon the States concerned to reach an agreement in respect of the damage caused, is also of crucial importance. The need for an agreement between successor States and the injured State in respect of damage may be of varying degrees of relevance to successor States with differing links to the wrongful act and therefore to the damage.

**Cameroon** –My delegation welcomes the efforts made by the ILC on draft Directives 10 and 10 bis which strike a balance between automatic succession and a clean slate. My delegation supports the flexible wording of this Directive which strongly suggests negotiation and gives States the freedom to choose the terms of the agreement. My delegation also welcomes the spirit and the letter of Directive 11 and paragraph 3 of Directive 12 which also suggest negotiation in the case of the dissolution of a State. With this openness to negotiation, the ILC happily aligns itself with the position of the Permanent Court of International Justice as expressed in the Case Concerning Rail



Traffic between Lithuania and Poland; it also joins the ICJ in the Case Concerning the Application of the Interim Agreement of 13 September 1995 and the Arbitration Tribunal of the Agreement on German External Debts, in the 1972 case between Greece and the Federal Republic of Germany.

### **Guideline 10, 10bis and 11**

**Slovakia** - 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].

**Romania** - At the same time, we note the attention of the Commission in seeking the right balance between the rule of automatic succession and the “clean slate” principle, as for example, reflected in commentary to draft guideline 10 (as well as in other situations, presented in other guidelines), on uniting of States and emphasizing the endeavors of the States to reach an agreement on how to address the injury. We find suitable the proposal underlining the need of a solution agreed between the States concerned. This solution is also to be regarded in close connection with one of the paramount premises on which the development of the work on this subject took place, namely the primary role of agreed solutions between the interested States, when dealing with this sensitive issue.

**Malaysia** - Concerning draft guideline 10, Malaysia agrees that flexibility should be given to States to choose the modalities of the agreement between the injured State and the successor State on how to address the injury committed by any of the predecessor States in cases of uniting of States...Nevertheless, Malaysia underscores the importance of States to enter into the negotiations with a view to concluding an agreement. *I can cite ICJ case-law.* The obligation must be fulfilled in good faith as clearly supported by several decisions of international courts and arbitral tribunals... With regard to draft guideline 10 *bis*, Malaysia reiterates its position that the onus is on the incorporating State to negotiate in good faith with the injured State for purposes of reaching an agreement...Malaysia also agrees with the formulation of paragraph 2 to provide further clarity that incorporation does not diminish the responsibility of the State that committed the wrongful act especially since the articles on Responsibility of States for Internationally Wrongful Acts 2001 made no reference to the scenario contemplated in paragraph 2.

**Italy** - Moreover, Italy once again commends the effort of the Special Rapporteur in seeking a balance between the continuity of rights and obligations from the predecessor

State to the successor State and the “clean State” doctrine. In this vein, we agree with the language adopted in Guidelines 10, and 10 bis and 11, which highlights the crucial role of agreements between concerned States addressing injuries deriving from internationally wrongful acts.

**Brazil** acknowledges that a case-by-case analysis will usually be required to ascertain how best to apply the general rules of state responsibility in situations of succession of states. However, the proposed draft guidelines 10, 10bis and 11, on uniting of states, incorporation of a State into another State and dissolution of a State could provide additional legal clarity or guidance on the matter. Given that the draft is intended to be applied in the absence of any different solution agreed upon by the States concerned, there seems to be little added value in limiting the guidelines to encouraging States to solve the issue by negotiation.

**Brazil** – I agree - Additional clarification on the reasons for the difference of treatment foreseen in draft guidelines 10bis (1) and (2) would also be forthcoming. Whereas the latter provides for the responsibility of the incorporating State when it committed an internationally wrongful act prior to incorporation, the former only provides for negotiations with the incorporating State when the incorporated State committed a wrongful act.

### **Guideline 11**

**Slovakia** - 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].

**Malaysia** - As for draft guideline 11, Malaysia wishes to highlight that the dissolution of a State might give rise to different kinds of legal relations. In this regard, some successor States might have a closer connection with the wrongful act or the injury than others. Therefore, there is a need for agreement on how to address the injury may not be relevant to all successor States to an equal extent... Malaysia also notes that the factors for determination listed in draft guideline 11 is non-exhaustive. Therefore, Malaysia supports the formulation which allows flexibility for other factors not listed to also be considered in coming up with an effective solution between the injured State and the relevant successor State or States.

### **Guideline 12**

**Republic of Korea** - My delegation also supports distinguishing the situation where two or more States merge to form one successor State but all the predecessor States cease to exist, namely the Uniting of States, from the situation where one or more States become incorporated into another State. My delegation also supports maintaining the distinction between situations where the predecessor State may cease to exist (for instance, merger, incorporation, dissolution) from situations where the predecessor State continues to exist (newly independent State and separation of parts of a State, as dealt with together under draft Guideline 12, “Cases of succession of States when the predecessor State continues to exist”).

**Portugal** - In what concerns Draft Guideline 12, it is not entirely clear whether the reference to "a successor State" includes the same situation addressed in draft Guideline 13. However, it seems unlikely that this is the case. Therefore, Portugal would welcome further clarification on the exact scope of these two provisions and their interaction.

**Malaysia** - Draft guideline 12 confirms that the position of the predecessor State is not affected by the succession of States. Malaysia is of the view that paragraph 2 is ambiguous about the circumstances in which a successor State may be able to invoke the responsibility of the State that committed the wrongful act due to the usage of the term “particular circumstances”. At this juncture, the only situation that comes to mind is when there is a connection between the injury to the predecessor State before the date of succession and the territory or the nationals that became those of successor State upon the succession. Other than the situation envisaged, Malaysia seeks clarification on any other circumstances that may warrant an invocation by the successor State...Malaysia notes the Drafting Committee’s view that such specificity was not necessary in the provision, and that the meaning of “particular circumstances” would be explained further in the commentary. However, Malaysia believes that if there is only one situation which is foreseen to occur, that situation should be spelt out in the provision. Otherwise, the generality of the term “particular circumstances” would leave room to differing interpretation which may pose difficulties in its implementation.

**Greece** - Paragraph 12 of Guideline 12 provides that, in cases of an internationally wrongful act against a predecessor State that continues to exist, a successor State may, in particular circumstances, be entitled to invoke the responsibility of the State that committed the internationally wrongful act. In our view, the relevant paragraph (par. 6) of the commentary, which refers to cases of connection between the injury to the predecessor State before the date of succession and either the territory or the nationals that became those of the successor State should also provide, as an example of “particular circumstances”, instances of illegal removal of property, cultural or other, from the territory which came under the jurisdiction of the successor State.

**Cameroon** – My delegation welcomes the efforts made by the ILC on draft Directives 10 and 10 bis which strike a balance between automatic succession and a clean slate. My

delegation supports the flexible wording of this Directive which strongly suggests negotiation and gives States the freedom to choose the terms of the agreement. My delegation also welcomes the spirit and the letter of Directive 11 and paragraph 3 of Directive 12 which also suggest negotiation in the case of the dissolution of a State. With this openness to negotiation, the ILC happily aligns itself with the position of the Permanent Court of International Justice as expressed in the Case Concerning Rail Traffic between Lithuania and Poland; it also joins the ICJ in the Case Concerning the Application of the Interim Agreement of 13 September 1995 and the Arbitration Tribunal of the Agreement on German External Debts, in the 1972 case between Greece and the Federal Republic of Germany.

**Cameroon** - My delegation also welcomes the efforts made by the ILC in seeking legal certainty in protecting the rights of the injured State in the context of State succession in which the predecessor State continues to exist. And in this regard, my delegation supports the phrase "remains entitled to invoke" used in Article 12, paragraph 1, which emphasizes that the position of the predecessor State is not affected by State succession. My delegation also supports the phrase "if the injury it has suffered has not been made good" to take into account the link between the injury and the right of the predecessor State to invoke responsibility.

In this vein, my delegation calls for a clear distinction between reparation, on the one hand, and cessation and assurances and guarantees of non-repetition, on the other. My delegation believes, however, that a more in-depth discussion on the forms of reparation with regard to the different categories of State succession is necessary, in particular on the circumstances leading to different solutions.

**Czech** - Guideline 12 deals with those cases where the injured predecessor State continues to exist. Quite understandably, as stated in paragraph 1 of this guideline, such State "continues to be entitled to invoke the responsibility of the [wrongdoing] State even after the date of succession, if the injury to it has not been made good". The guideline focuses on "invocation of responsibility" which entitles the right of the injured State to request compensation in its various forms. Thus, e. g., should the restitution or compensation *in lieu* of the restitution, concern the part of the territory or population, which became the territory or population of the successor State, the right to invoke responsibility may belong also to the successor State. We therefore agree with the content of all 3 paragraphs of this guideline. Finally, it is our understanding that guideline 12 covers the same cases of succession of States as those listed in guideline 9. It would therefore be desirable to ensure also drafting coherence of these two guidelines, as far as the specification of situations of State succession is concerned.

### **Guideline 13**

**Malaysia** - As regards draft guideline 13, Malaysia is agreeable with the Commission that it is unnecessary to make explicit in the provision reference to an internationally wrongful act that occurred before the date of succession as in a situation of unification of State, the predecessor State had ceased to exist on the date of succession.

**Czech** - Guidelines 13, 13bis and 14, are built-upon an idea of the entitlement of the successor State to invoke responsibility of a State which committed an internationally wrongful act against the predecessor State which ceased to exist. They apply, respectively, in situations of uniting of States, incorporation of a State into another State and dissolution of a State, Understandably, in case of dissolution of a State, and in view of the plurality of successor States, this right has to be exercised depending on particular circumstances of the situation. We note with interest that paragraph 2 of guideline 14 contains an indicative list of elements to be taken into consideration by the States concerned in course of their negotiations aimed at reaching the agreement addressing the injury caused by the wrongful acts.

### **Guideline 13bis**

**Malaysia** - Concerning draft guideline 13 *bis* which provides for the scenario where an injured predecessor State becomes part of another whose legal personality continues, Malaysia is agreeable that the term “*wrongdoing State*” is a concise way of indicating the State that was responsible for the internationally wrongful act. Therefore, Malaysia is of the view that this draft guideline is generally acceptable. *u*

### **Guideline 14 and 15**

**Slovenia** - We would especially like to commend the commentaries on Guideline 11 and Guideline 14 (both on Dissolution of a State), which apply the terminology of the Vienna Convention on Succession of States in respect of State Property, Archives and Debts and seek to find a relevant connection between a wrongful act and successor States.

**Slovenia** agrees with the Special Rapporteur that domestic laws should be cited as State practice. As stated by the Special Rapporteur, the report does not claim that they were an expression of a State’s legal conviction that it was fulfilling an obligation under international law. Nevertheless, such acts represent State practice and were driven by the social need to address, in the context of succession of States, the injury for which the predecessor State was responsible.

**Slovakia**- 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].

**Portugal** - Given the scope of Draft Guidelines 11 and 14, there does not appear to be a defensible reason for using different methodologies and terminology in the two Draft Guidelines... Furthermore, in both draft guidelines, the only relevant element for the formation of two or more successor States is the parts of the territory of the predecessor State. It is well known that, in addition to the qualification of a "defined territory," States must usually have a permanent population. Therefore, the question arises whether an existing sovereign state that incorporates the population of the predecessor state is covered by Draft Guideline 10bis, paragraph 1, and Draft Guideline 13bis, paragraph 1. Finally, it is not clear what "particular circumstances" may justify one or more successor states being entitled to invoke the responsibility of the wrongdoing state under Draft Guideline 14.

**Malaysia** - With regard to draft guideline 14, Malaysia is of the view that the proposed formulation is clear and hence, has no objection to such proposal. *Positive.*

**Cameroon** - My delegation welcomes Guidelines 7 and 7 bis which follow the arrangement of articles 14 and 15 of the articles on responsibility of States for internationally wrongful acts.

**Czech:** We note with interest that paragraph 2 of guideline 14 contains an indicative list of elements to be taken into consideration by the States concerned in course of their negotiations aimed at reaching the agreement addressing the injury caused by the wrongful acts.

### **Guideline 15**

**Malaysia** - Further, although Malaysia could support the inclusion of draft guideline 15, Malaysia recommends that the Commission could provide further clarification on situations where exception to the general requirements of continues nationality in the commentary for clarity purposes and implementation of the present guidelines.

**Czech** - We agree with guideline 15 which excludes from the scope of the present project questions of diplomatic protection that could arise in the context of succession of States.

**Brazil** –Additionally, Brazil would also welcome further clarification on draft guideline 15bis, which addresses cessation and non-repetition, especially on how it may affect the 2001 draft articles on responsibility of States for internationally wrongful acts.

**Cameroon** - My delegation would have liked the ILC to address the issue of diplomatic protection in its draft guideline 15. While it is true that this issue is complex in the context of its normal formulation, particularly with regard to multiple nationalities, for my delegation it is even more complex in the context of State succession. Although the ILC commentary opines that the fact that no mention is made of the special rules on diplomatic protection does not mean that the rule on nationality of claims and other rules on diplomatic protection cannot be applied in situations of State succession, it would have been desirable to consider the question of nationality in the context of State succession, It would have been desirable to dwell on this issue, given that State succession, which entails a change in the nationality of persons residing in the territory or parts of the territory of a predecessor State that becomes the territory of a successor State, further complicates the issue of identifying effective nationality in the case of multiple nationalities.

### **Guideline 15bis**

**Malaysia** - Concerning draft guideline 15 *bis*, Malaysia can support the views of the Commission to have a separate paragraph for each scenario.

**Czech** - Conversely, guideline 15bis concerning cessation and guaranties of non-repetition is rather superfluous. Its inclusion, it is our concern, could only undermine the authority and integrity of 2001 ARSIWA, which undoubtedly apply to any internationally wrongful act, simple or lasting, irrespective of its history, including succession of States.

### **Outcome**

**US** - At the outset, the United States applauds the ILC's decision to move toward draft guidelines on this topic. Guidelines such as this can assist in the progressive development of international law. The exercise of developing guidelines can also allow for the collection of State practice on the topic—where it might exist—without creating new rules and responsibilities. In particular, the United States is pleased to see that more prescriptive text, such as the words “shall be,” has been replaced by “is” or “should” in the draft guidelines. As previously noted in our submission for Cluster One, the United States remains concerned that certain ILC work products that are not intended to be treaties, like the draft principles on the environment in relation to armed conflict, nonetheless couch proposals for the progressive development of international law in

binding terms like “shall” and “must.”.. The United States looks forward to further reviewing the draft guidelines at the conclusion of the work on first reading.

**United Kingdom** notes the discussion among the Commission as to the most appropriate way to proceed with this topic and the form of the final product. We continue to maintain an open mind as to the utility of this topic, and what outputs might best assist States going forward.

**Austria** welcomes the decision of the Commission during its 73rd session to change course and to prepare “guidelines”.

**South Africa** - 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... The South African delegation has taken note of the three options that were discussed at the 74th 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.

**Slovenia** - On the format, Slovenia – as a successor State itself – prefers a stronger form, particularly draft articles with commentary, as this would be consistent with the Commission’s earlier work on State responsibility and State succession. However, we can support the form of "guidelines" should this enable a consensus, States that undergo the process of succession in the future will be able to benefit from this work.

**Slovakia** - 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 (which state initially mooted the idea of draft guidelines instead of 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.

**Singapore** - My delegation has noted the change in form of the Commission’s final output on this topic from draft articles to draft guidelines, and the Special Rapporteur’s proposed new scheme for the consolidation and restructuring of the previous draft provisions referred to the Drafting Committee. Regardless of the form of the final



output, we share the views of others that primacy should be accorded to agreements entered into by the concerned States and that it is important for the output to be concise, balanced and serve as useful practical guidance to States.

**Sierra Leone** - The Commission considered the fifth report of the Special Rapporteur, primarily addressing the problems relating to a plurality of injured successor States or of responsible successor States and decided to change the form of output from Draft Articles to Draft Guidelines. This appears to have been in response to State concerns. There will be an opportunity to have a further examination of the change of form when the Draft Guidelines and commentaries would be adopted on First Reading. ..The deliberations in the Commission in which it considered the difference between the two forms of outcomes remains helpful, as we await greater clarity by the Commission on the effect of the nomenclature of the forms of outcomes, from the Working Group on Methods of Work, we take note that the Commission understands, at least for the purposes of this topic, Draft Guidelines as intended to provide normative guidance to States while Draft Articles are framed as directions to States, often suitable for incorporation in a treaty... Pending our study of the Commission's work to date, on this topic, Sierra Leone reserves its position and looks forward to the opportunity to comment, at a later stage, on the substance of the Commission's provisionally adopted draft guidelines... As the Commission starts a new quinquennium next session, the Commission's new composition will have to decide on the future of Succession of States in respect of State responsibility topic. The Commission has the various options it debated this session, including a) appointing a new special rapporteur to continue the topic, orb) discontinuing the Commission's work on an instrument, and, finally c) convening a Working Group, with the aim of producing a report on the topic that would be annexed to the Commission's report. The latter approach, followed for recent topic (*out dedere out judicare*) led to the completion of a report in 2014. This seems to be the middle and reasonable approach, which we are persuaded to support.

**Romania** - We also commend the work of the International Law Commission (ILC) in preparing the structure and content of the chapter dedicated to this issue... We note that the ILC has adopted during its last session several draft guidelines and the respective commentaries. We are satisfied with the agreed outcome of the work dedicated to this topic, namely draft guidelines instead of draft articles, taking into consideration a number of arguments that were aptly developed by many delegations during discussions within the Sixth Committee and by the esteemed members of the ILC, during debates on this issue.

**Republic of Korea** - My delegation respects the decision made by the Commission to change the format of the work from “draft articles” to “guidelines” and regards this as the appropriate form for the work on this topic. While consistency with the previous work of the Commission with respect to State succession is important, my delegation takes note of the relative paucity of State practices as well as insufficient and inconsistent State practices in the issue of succession of States in respect of State responsibility. My delegation also concurs with those ILC members who believe that the work would not be able to produce a set of binding rules. Draft articles adopted so far by the Commission

or those adopted provisionally by the Drafting Committee or suggested by the Special Rapporteur are mixed in nature, with some having a normative and prescriptive character (for instance, Part I and Part IV) and others a recommendatory or guideline character (Part II and Part III).

**Republic of Korea** - My delegation finds that the previously adopted Draft Articles 1, 2, 5, 7, 8 and 9 are to be revised in the form of draft guidelines. (A/77/10, p.286, para.76, ft.1144) My delegation also takes note that the Commission provisionally adopted Draft Guidelines 6, 7, 10, 11, 12, 13, 13bis, 14, 15, 15bis and commentaries thereto in its seventy-third session.

**Sierra Leone** - We therefore note that accordingly, the words "shall be" were replaced by "is" in Draft Guideline 8, reflecting the descriptive nature of the provision. Likewise, in Draft Guidelines 9, paragraph 2, 10, 10bis and 11, the imperative verb "shall" was replaced by "should", thus reframing the provisions as guidance to States. We take note of the Draft Guidelines {6, 7 bis, 10, 10 bis and 11, 12, 13, 13 bis, 14, 15 and 15bis}, as well as their commentaries provisionally adopted by the Commission. And we further take note of the Draft Guidelines (1, 2, 5, 7, 8, 9 and 15ter) that are still to be discussed and adopted by the Commission, with their commentaries.

**Thailand** - We take note of the Commission's decision to **change the form of the outcome of its work from draft articles to draft guidelines** as well as its **provisional adoption of 11 draft guidelines** (6, 7 *bis*, 10, 10 *bis*, 11, 12, 13, 13 *bis*, 14, 15 and 15 *bis*), together with commentaries thereto.

**Slovakia** - 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.

**Portugal** is aware that the lack of a coherent and consistent international practice on the issue of the succession of States in respect of State responsibility complicates any exercise of codification of international law. In this context, Portugal welcomes the decision of turning the draft articles into draft guidelines. Such output can still contribute significantly to greater clarity and understanding on this issue.

**Poland** - With regard to "Succession of States in respect of State responsibility", my delegation fully supports the ILC's decision to change the format of the Commission's completed work on this topic from draft articles to draft guidelines. Such an approach expresses in a more appropriate manner the nature of the ILC's work – i.e. a presumption of the subsidiary nature of the prepared provisions and the priority of agreements entered into between the States concerned. It is also justified by the scarcity of state practice on this topic.

**Norway – Nordic countries** - We take note of the Commission's decision to the effect that the work on this topic will take the form of draft guidelines rather than draft articles. Although we for the sake of consistency with the Commission's earlier work, earlier expressed a slight preference for draft articles, we would have nothing against draft guidelines either. For us the form of the outcome is not of major importance, what counts is a well-drafted and balanced set of provisions that will be useful in practice.

**Netherlands** - 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.

**Malaysia** - Finally, as stated earlier, Malaysia notes that this is the Special Rapporteur's last report and that no new draft articles were proposed. With regard to the future programme of work for the topic, it will be up to the new composition of the Commission to decide in 2023. Malaysia welcomes the suggestion made by some Members to establish a working group for the topic to draft the commentaries to the draft guidelines to be transmitted to States for their comments.

**Malaysia** also expresses its gratitude to the Special Rapporteur for consolidating the draft guidelines for purposes of the first reading of the draft guidelines at the current session. Malaysia supports the current format of the work of the Commission which has been changed to draft guidelines which aims to serve as general guidance for States as opposed to developing a set of binding rules... Malaysia notes that draft guidelines 6, 7 *bis*, 10, 10 *bis*, 11, 12, 13, 13 *bis*, 14, 15 and 15 *bis* has been provisionally adopted by the Commission at its seventy-third session.

**Jordan** - My delegation wishes to express its disappointment with the outcome on the topic. Since the beginning of its consideration by the ILC, it has been misguided due to the insistence of the Special Rapporteur to advance certain hypothesis that the Commission overwhelmingly rejected.

**Italy** would also like to congratulate the Commission for provisionally adopting draft guidelines 6, 10, 10 *bis* and 11 - which had been provisionally adopted by the Drafting Committee in 2018 and 2021 - as well as draft guidelines 7 *bis*, 12, 13, 13 *bis*, 14, 15 and 15 *bis* - provisionally adopted by the Drafting Committee at the recent 73<sup>rd</sup> session, together with commentaries thereto... In this respect, turning to the format of the work on the subject matter, Italy welcomes the decision of the Commission to provisionally adopt the texts formerly referred to as draft articles in the form of draft guidelines, in consideration of the scarce State practice on the topic. It is our view that the preference expressed for "a softer outcome", in the words of the Special Rapporteur, has the

potential to preserve the consistency of the general rules of State responsibility and to further promote the development of guidelines in fields that have not yet been regulated by international law.

**France** - With regard to “State succession in matters of State responsibility”, France congratulates the Commission and its Special Rapporteur for the progress of the work. My delegation has taken note of the reorientation made by the Commission, which decided that its work on this subject should lead to draft guidelines and not draft articles.

**Estonia** - We welcome the Commission’s decision about the format of the outcome of the work on this topic. We think this is a reasonable way to proceed to have draft guidelines, rather than draft articles.

**El Salvador** - From a general perspective, my delegation welcomes the common appreciation of the Commission on the importance of stressing the subsidiary nature of the draft articles, including those provisionally approved by the Commission in its 71st and 72nd period of sessions; and on the priority that should be given, instead, to agreements between interested States.

o **El Salvador** also considers that, the fact of changing to draft guidelines could allow to extend its content, having the opportunity to incorporate within of the text the most substantial comments of the International Law Commission, which that would facilitate a better understanding of its connotation, interpretation and the meaning of these when they reach their final recipients in the States. The above is due to technical and specialized that some texts of the Commission sometimes turn out to be people who have not followed the theme since its inception and who can find difficulties when wanting to apply them or take them as a base.

**El Salvador** - We trust in the same way in the leadership of the Rapporteur in this matter and in maintaining the guiding nature of the guidelines taking into account the positions expressed by the membership of this Commission.

**Czech Republic** We note the Commission’s decision to modify the form of the draft provisions from that of “draft articles” to that of “draft guidelines”. Because the revision of provisions adopted during previous sessions did not affect their content.

**(Austria)** In this context, Austria has also noted that there have been discussions within the Commission to finalise this topic by drawing up a report that would be annexed to the Commission’s report. Given the complexity of the topic as well as the paucity of practice, this would indeed be a preferred final format for the topic...it might be most appropriate to assess the various problems addressed by the topic of succession of states in respect of state responsibility in a report instead of trying to squeeze incompatible legal views in vague compromise formulations.

**Cameroon** - My delegation welcomes the method of work adopted by the Commission in the preparation of its fifth report and shares the view of the Special Rapporteur that the draft articles are subsidiary in nature and that priority should be given to agreements

between the States concerned and that, in the absence of such agreements, and where there are no special links between one or more successor States and the injury, the solution should be sought in equitable distribution.

**China** agrees that the Commission no longer proposes a separate draft article on the succession of responsibilities involving multiple countries, and agrees with the Commission's conclusion that relevant issues can be resolved through the general principles of state responsibility.

**China** - It is also difficult to reflect the *opinio juris* of States. In the previous discussions of the Sixth Committee, some delegations, including China, suggested that the results should be changed to a draft guideline or a research report. China appreciates that the Special Rapporteur has adopted the above-mentioned suggestions, and hopes that the new committee will further enrich the draft guidelines from the perspective of enhancing practical guidance based on the existing achievements, such as adding a comment on the dissolution of a country in the commentary. *SR research is essential*. In order to achieve the Commission's goal of striking a balance between the "blank slate" principle, that is, the newly independent state does not assume the treaty obligations assumed by the successor state, and the automatic succession rule.

**Colombia:** In this respect, we share the position held by some members of the Commission that it is not necessary to include a provision on the plurality of States since the particular aspects of the existence of several States in cases of continuing or composite events could be solved by recourse to the general rules on State responsibility.

**Colombia:** We also share the Commission's decision that its work on the topic will take the form of draft guidelines rather than draft articles. This is because, in Colombia's view, there is little State practice to justify the adoption of draft articles.

**Colombia:** Thus, the draft guidelines will provide general guidance to States, but will not enshrine a set of binding rules. In this regard, however, we also believe it is important to note that, for my country, these guidelines remain subsidiary in nature, i.e. they could be used in the absence of an agreement between the Parties under which they agree on certain rules relating to succession between them.

**Croatia** takes note of the ILC's decision to instruct the Drafting Committee to proceed with the preparation of draft guidelines on the previously prepared and provisionally adopted draft articles. We look forward to following the continuation of the topic at the Commission's next session and to the appointment of a new Special Rapporteur.

**El Salvador** - Finally, on the final form of the Commission's product in this matter, online with our general comments previously expressed, we consider that the way to

proceed would be – in this specific case – draft conclusions or a project of guidelines that offered general orientations to the States; however, We respect the decision of the Commission to establish a Working Group chaired by the Special Rapporteur to influence from this point of view the project that had already been transferred to the Editorial Committee.

**Estonia** - We would especially like to commend the excellent work of the Special Rapporteur in bringing us a comprehensive overview of the topic while also pinpointing the elements of divergence and misunderstandings that would merit further discussions. We note that the Special Rapporteur has been very tentative in the Sixth Committee debates and has adjusted his recommendations accordingly including addressing some of our concerns.

### **Utility**

**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.

**Slovenia** - To conclude, Slovenia strongly supports future work on this topic. It would be regrettable if the Commission's work on the topic was left without a conclusion

**Slovakia** - 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.

Sierra Leone - First, we wish to thank the Special Rapporteur, **Mr. Pavel Sturma, (Czech Republic)**, for leading the work of the Commission on the topic. We thank him for his notable contributions, hard work and dedication for the benefit of the Commission, and ultimately, States and the international legal community as a whole.

**Senegal** - My delegation will continue to follow with interest the progress of the Commission's deliberations the Commission's deliberations on the draft articles on State succession on State responsibility and the draft guidelines, provisionally adopted by the Commission... My delegation therefore remains attentive to the continuation of the discussions in the Commission.

**Romania** - We look forward to the future work of the Commission on the matter.

**Republic of Korea** - My delegation welcomes the continuing discussion on the topic “Succession of States in respect of State Responsibility” and would like to thank Special Rapporteur Pavel Šturma for his outstanding contribution to the topic and for presenting his fifth report. We would also like to thank all ILC members for their valuable contributions to this important topic, especially the Drafting Committee, chaired by Professor Ki-gab Park, for preparing the draft guidelines, including those provisions provisionally adopted by the Commission in the previous sessions in accordance with the decision of the Commission.

**Portugal** has been following closely the discussions by the Commission on this topic. We are looking forward to its conclusion on first reading.

**Portugal** is aware that the lack of a coherent and consistent international practice on the issue of the succession of States in respect of State responsibility complicates any exercise of codification of international law. In this context, Portugal welcomes the decision of turning the draft articles into draft guidelines. Such output can still contribute significantly to greater clarity and understanding on this issue

**Norway** - This report provides us again with valuable insights into the challenging intersection of law on State succession and law on State responsibility

**Netherlands** - 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.

**Mexico** thanks Special Rapporteur Pavel Šturma for his fifth report presented on the theme “Succession of States in relation to the responsibility of the State”. Since this topic is related to the study of various phenomena facts and their implications for legal relations between States, the Draft Articles on State Responsibility for acts internationally illegal is of great relevance in this context... Regarding the final form that this project should have, Mexico you have flexibility regarding different options available. my delegation would continue to be aware of the Commission's future work on the matter.

**Italy** - I will now address the topic of “Succession of States in respect of State Responsibility”. Firstly, Italy would like to commend the Special Rapporteur, Prof. Pavel Šturma, for producing a comprehensive and detailed fifth report, which deals with a number of essential issues, namely the plurality of States in the contest of succession, especially in cases of continuing or composite acts, and the reparation for injuries resulting from wrongful acts committed by the predecessor or against the predecessor State.

**Iran** - we would like to thank the Special Rapporteur, Mr. Pavel Šturma, for presentation of his fifth Report, as well as the Commission for the work carried out so far in this respect.

**Greece** - Allow me to use this opportunity to commend the Special Rapporteur, Mr. Pavel Šturma, for the high quality of his Fifth Report, in particular its careful consideration of the issue of shared responsibility, as well as for his overall and outstanding contribution in the consideration of the topic by the Commission.

**Estonia** - We would especially like to commend the excellent work of the Special Rapporteur in bringing us a comprehensive overview of the topic while also pinpointing the elements of divergence and misunderstandings that would merit further discussions.... Estonia extends once again its appreciation to the Special Rapporteur Pavel Šturma and the Commission for the work done on the topic of succession of States in respect of State responsibility.

**El Salvador** - In the absence of constant practice between States, its codification is inevitably difficult; However, this does not prevent the important contribution of this draft provision from being appreciated; and guidance that this entails providing to the international community.

The **Czech** delegation welcomes the progress of the work on the topic “Succession of States in respect of State responsibility” and appreciates the contribution of the Special Rapporteur, Mr. Pavel Šturma, to the over-all achievement.

**Croatia** - We look forward to following the continuation of the topic at the Commission’s next session and to the appointment of a new Special Rapporteur.

**Belarus** believed that states comments at 76<sup>th</sup> session remain relevant.

**Brazil** –The current work of the ILC on the matter is instrumental to identifying the rules of international law regarding a subject where State practice is limited. Brazil believes it is important that the Commission continue to be seized of this topic.

**Brazil** recalls that the ILC has contributed to the codification and progressive development of several aspects of state succession. Its efforts have led to the adoption of the Vienna Convention of Succession of States in respect of Treaties, to which Brazil is a party, and the Vienna Convention of Succession of States in respect of State Property, Archives and Debts, as well as the draft articles on Nationality of Natural Persons in relation to the Succession of States. By studying the interaction between this area of law and State responsibility, the Commission may contribute to filling a gap in international law. In cases of State succession, on the one hand, neither the “clean slate” rule nor automatic succession are appropriate as rules of general application.



**Croatia** - the Commission should pay attention, *inter alia*, to the situations in which part or parts of the predecessor State that would become the successor state could bear responsibility for international illegal acts committed not only towards / against third States, but also towards / against other successor states of the former common state.

**Brazil** reaffirms its view that the draft guidelines are non-binding in nature (*I agree*) and should be subsidiary to agreements concluded between the affected states, as stated by draft guideline 1(2). In this sense, the Commission could present proposals on state responsibility in cases of merger or incorporation of States in keeping with the resolution adopted in 2015 by the Institute of International Law – provided that these proposals are likewise couched on non-binding language.

**Cameroon** - My delegation takes note of the decision to provisionally adopt the texts formerly known as draft articles as draft guidelines, given the limited practice of States in this regard. In my delegation's view, this option makes it possible to preserve the coherence of the general rules of State responsibility and to further promote the elaboration of guidelines in areas that have not yet been regulated by international law.

**Cameroon** - Ultimately, my delegation notes that, because State succession is not a common legal situation, State practice is limited, which suggests a bear-pace approach, while favouring the negotiation and undertaking of obligations by States in the framework of synallagmatic agreements.

**China** - It is also difficult to reflect the *opinio juris* of States. In the previous discussions of the Sixth Committee, some delegations, including China, suggested that the results should be changed to a draft guideline or a research report. China appreciates that the Special Rapporteur has adopted the above-mentioned suggestions, and hopes that the new committee will further enrich the draft guidelines from the perspective of enhancing practical guidance based on the existing achievements, such as adding a comment on the dissolution of a country in the commentary. In order to achieve the Commission's goal of striking a balance between the "blank slate" principle, that is, the newly independent state does not assume the treaty obligations assumed by the successor state, and the automatic succession rule.

**Colombia:** Thus, the draft guidelines will provide general guidance to States, but will not enshrine a set of binding rules. In this regard, however, we also believe it is important to note that, for my country, these guidelines remain subsidiary in nature, i.e. they could be

used in the absence of an agreement between the Parties under which they agree on certain rules relating to succession between them.

**Colombia:** In the light of these general considerations, Colombia appreciates that the Drafting Committee has begun to prepare draft guidelines on the basis of the texts that had been referred to it by the Commission at previous sessions. What does this imply – states expect us to provide guidelines, clarification and good commentary? However, we are fully aware of the high legal complexity of this issue, and we believe that the guidelines should be analysed holistically and in the light of their new legal nature, i.e. as guidelines and not as articles, and we will therefore continue to follow developments on this issue and share our impressions in due course.

**Croatia** - As regards the topic of “Succession of States in respect of State responsibility”, Croatia highly appreciates the significance that the ILC has given to this issue so far.

**Cuba** considers that State responsibility for Internationally Wrongful Acts in cases of State succession should be assessed in the light of the draft articles already adopted by the ILC on State Responsibility for Internationally Wrongful Acts, which were adopted by the Commission during its 73rd session as draft guidelines.

**Czech** - We are convinced that it would be worthwhile to continue along this path and we hope that appropriate attention will be given to this project also by the Commission in its renewed composition.

**El Salvador** - On the issue of State succession in relation to State responsibility, my delegation wishes to extend its gratitude to the Rapporteur Mr. Pavel Šturma, for the extraordinary contribution made in the domain of the subject, advice and cooperation provided to the Commission.

### **Special Rapporteur**

**Viet Nam** - On this topic, we wish to congratulate the Special Rapporteur, Mr. Pavel Šturma, for the completion of the fifth report, and we would like to recognize that his invaluable contribution has significantly facilitated the work of the Commission on the topic of concern.

**USA** - On the succession of States in respect of State responsibility, we warmly thank Mr. Pavel Šturma, the Special Rapporteur, for his thoughtful contributions on this topic.

**United Kingdom** thanks the Commission for its further consideration of the topic of ‘Succession of States in respect of State responsibility’ and thanks the Special Rapporteur, Mr Pavel Šturma, for his fifth report.

**Turkey** - We would like to thank Special Rapporteur Mr. Pavel Šturma for his fifth report and the Commission for their deliberations on “Succession of States in respect of State responsibility”. .. We refer to and reiterate our positions in our previous statements on the topic. *Read previous year comments.* We would like to underline that absence of a comment or observation should not be construed as agreement with the content of the reports prepared up to now on the topic, and the references therein.

**Thailand** - First, on the topic ‘Succession of States in respect of State responsibility’, Thailand commends the Special Rapporteur, Mr. Pavel Šturma for his fifth report and devotion to this topic.

**South Africa** - 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.

**Slovenia** - In the context of Succession of States in respect of State responsibility, Slovenia commends the Special Rapporteur on successfully concluding his work on State succession in respect of State responsibility. We commend Professor Šturma for his extensive contributions to the codification and progressive development of international law.

**Slovakia** - 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.

**Singapore** - First, on Chapter VII on the topic “Succession of States in respect of State Responsibility”, Singapore thanks the Special Rapporteur, Mr Pavel Šturma, for his fifth report, which focused on questions relating to plurality of injured and responsible successor States.

**Sierra Leone** - First, we wish to thank the Special Rapporteur, Mr. Pavel Sturma, (Czech Republic), for leading the work of the Commission on the topic. We thank him for his notable contributions, hard work and dedication for the benefit of the Commission, and ultimately, States and the international legal community as a whole.

**Russian Federation** - We would like to express our deep gratitude to the Special Rapporteur on the topic "Succession of States in respect of responsibility States" to Mr. Sturma for his significant efforts in developing this complex and controversial topic and, in particular, for preparing fifth report on issues related to plurality of victims or those responsible successor states.

**Republic of Korea** - My delegation welcomes the continuing discussion on the topic "Succession of States in respect of State Responsibility" and would like to thank Special Rapporteur Pavel Šturma for his outstanding contribution to the topic and for presenting his fifth report. We would also like to thank all ILC members for their valuable contributions to this important topic, especially the Drafting Committee, chaired by Professor Ki-gab Park, for preparing the draft guidelines, including those provisions provisionally adopted by the Commission in the previous sessions in accordance with the decision of the Commission... Again, my delegation also appreciates the outstanding contribution of the Special Rapporteur, Mr. Pavel Šturma, whose mastery of the subject, guidance, and cooperation greatly facilitated the work on this topic.

**Romania** - We thank the Special Rapporteur (SR), Mr. Pavel Sturma, for his fifth report and as for his dedication to this complex, yet controversial issue of succession of States in respect of State responsibility. We are grateful for his flexibility and consideration for the views expressed in this Committee by national delegations, as reflected both in his report and in the report of the Commission on this matter.

**Portugal** - Concerning the topic "Succession of States in respect of State Responsibility" we would to begin by thanking Mr. Pavel Šturma, the Special Rapporteur, for his fifth report, which is devoted to both general issues regarding succession of States and international responsibility for wrongful acts, including the issue relating to the plurality of States in the context of succession.

**The Philippines** is grateful to the International Law Commission for its work and commends Special Rapporteurs Mr. Pavel Sturma and Mr. Marcelo Vazquez-Bermudez for their contribution to the work of the ILC, respectively, on "Succession of States in respect of State responsibility" and "General Principles of Law".

**Norway – Nordic countries** - The Nordic countries would like to thank the Special Rapporteur Pavel Šturma for his interesting and comprehensive fifth report on Succession of States in respect of State responsibility... We are pleased with the thorough consideration the Special Rapporteur has given to the comments of States throughout his work on this topic. At this point we would also like to express our appreciation to the Special Rapporteur for his valuable contribution during his years as a member of the International Law Commission.

**Malaysia** - My delegation would like to record its utmost appreciation to Mr. Pavel Šturma, the Special Rapporteur, for his fifth and last report on the topic of succession of

States in respect of State responsibility. Malaysia commends the Special Rapporteur for his commitment and contributions to the codification and progressive development of such a complex and challenging topic of international law.

**Jordan** - When, finally, it became clear that such an approach will not be successful, and in order to rush a first reading, the Special Rapporteur suggested, and the Commission accepted, to change course and format from draft articles to draft guidelines. What the Commission ended up with is a disjointed hybrid set of draft articles and draft guidelines, short of a first reading. It is the hope of my delegation that the Commission reconsiders the topic next year and removes it from its agenda.

**Iran** - I will now address the topic of “Succession of States in respect of State Responsibility”. Firstly, Italy would like to commend the Special Rapporteur, Prof. Pavel Šturma, for producing a comprehensive and detailed fifth report, which deals with a number of essential issues, namely the plurality of States in the contest of succession, especially in cases of continuing or composite acts, and the reparation for injuries resulting from wrongful acts committed by the predecessor or against the predecessor State.

**Iran** - we would like to thank the Special Rapporteur, Mr. Pavel Šturma, for presentation of his fifth Report, as well as the Commission for the work carried out so far in this respect.

**Greece** - Allow me to use this opportunity to commend the Special Rapporteur, Mr. Pavel Šturma, for the high quality of his Fifth Report, in particular its careful consideration of the issue of shared responsibility, as well as for his overall and outstanding contribution in the consideration of the topic by the Commission.

**El Salvador** - On the issue of State succession in relation to State responsibility, my delegation wishes to extend its gratitude to the Rapporteur Mr. Pavel Šturma, for the extraordinary contribution made in the domain of the subject, advice and cooperation provided to the Commission.

**Czech Republic** - To conclude on this topic, Madam/Mr. Chair, and notwithstanding some critical remarks, we consider the topic “Succession of States in respect of State responsibility” as an important one and wish to once more extend our appreciation to the outgoing member of the Commission, Mr. Pavel Šturma, for the work and progress achieved so far. We are convinced that it would be worthwhile to continue along this path and we hope that appropriate attention will be given to this project also by the Commission in its renewed composition.

**Croatia** - In this regard, we express our deep appreciation to the Special Rapporteur, Mr. Pavel Šturma, for his fifth report and for the outstanding contribution he has made to the work of the ILC on the topic... We look forward to following the continuation of the

topic at the Commission's next session and to the appointment of a new Special Rapporteur.

**Brazil** - With respect to Chapter VII of the ILC Report, Brazil would like to thank Special Rapporteur Pavel Sturma for his fifth report on succession of States in respect of State responsibility and for his in-depth engagement with the subject in his past reports.

**Cameroon** My delegation welcomes the successive reports of the Special Rapporteur and the working methods of the Commission, which have enabled it to approach this complex issue calmly and to produce high-quality work.

**China** - With regard to the topic "State Succession in Respect of State Responsibility", China thanks the Special Rapporteur for his efforts to complete this challenging topic. Tribute to the special rapporteur and the Commission for their rigorous and conscientious work.

**Colombia:** With regard to the first topic, Colombia wishes to begin by thanking the Commission, and in particular the Special Rapporteur, for his dedicated work in preparing the fifth report, which dealt mainly with the problems related to the existence of a plurality of injured successor or responsible successor States

**Czech** - The Czech delegation welcomes the progress of the work on the topic "Succession of States in respect of State responsibility" and appreciates the contribution of the Special Rapporteur, Mr. Pavel Šturma, to the over-all achievement.

**El Salvador** - Finally, on the final form of the Commission's product in this matter, online with our general comments previously expressed, we consider that the way to proceed would be – in this specific case – draft conclusions or a project of guidelines that offered general orientations to the States; however, We respect the decision of the Commission to establish a Working Group chaired by the Special Rapporteur to influence from this point of view the project that had already been transferred to the Editorial Committee.

### **Complexities – Challenges**

**Türkiye** still has concerns and doubts as to whether it is possible to differentiate between the political and legal aspects of this topic, which are largely intertwined. We also would like to draw attention to the fact that the scarcity of available State practice and prevalence of significant differences over the existing ones might even cast doubt on drafting "guidelines" on the topic.

**Slovakia** - 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.

**Sierra Leone** regrets that, for reasons that are unclear to us and may well be internal to the working methods of the Commission, it fell short of completing a first reading on this interesting if sometimes complex topic. Nevertheless, Sierra Leone welcomes the transparency with which the work completed to date was reported in Chapter VII of this year's report. Among other things, consolidating the text and commentaries in a single chapter with helpful footnotes made it easier for delegations to understand the status of the work done over the past few years on this topic. We intend to study carefully the proposals of the Commission on this topic presented in Chapter VII of the Report along with their accompanying commentaries... That said, Sierra Leone took note that the views of the current members were divided on these options. While those views could change, as the composition of the Commission changes, we hope that the Commission will take an institutional approach. We urge, in this regard, for the Commission to be transparent and inclusive when deciding the fate of this topic. We also urge it to carefully study the implications of the choice on the future of this topic also from the practical perspective of the utility of the final outcome for States.

**Russian Federation** - We would like to express our deep gratitude to the Special Rapporteur on the topic "Succession of States in respect of responsibility States" to Mr. Sturma for his significant efforts in developing this complex and controversial topic and, in particular, for preparing fifth report on issues related to plurality of victims or those responsible successor states... I would like to immediately note that the position of the Russian delegation in regarding the prospects for the work of the Commission on the topic as a whole has not undergone any changes... We still draw attention to the fact that state practice in the area under consideration is scarce and heterogeneous and, moreover, in doctrine, she is given a variety of, sometimes opposing interpretation. Trend in favor of norm formation international law in this direction is also generally not viewed... In view of the foregoing, we doubt the need and opportunities for further work on the topic.

**Romania** - We thank the Special Rapporteur (SR), Mr. Pavel Sturma, for his fifth report and as for his dedication to this complex, yet controversial issue of succession of States in respect of State responsibility. We are grateful for his flexibility and consideration for the views expressed in this Committee by national delegations, as reflected both in his report and in the report of the Commission on this matter.

**Portugal** is aware that the lack of a coherent and consistent international practice on the issue of the succession of States in respect of State responsibility complicates any exercise of codification of international law. In this context, Portugal welcomes the decision of turning the draft articles into draft guidelines. Such output can still contribute significantly to greater clarity and understanding on this issue

**Norway – Nordic countries** - Finally, as has been said before, State succession is a rare occurrence and the availability of State practice is limited. Therefore, we encourage the

Commission to maintain a prudent approach as work with this topic continues on the basis of the excellent groundwork laid by Professor Šturma. The Nordic countries are looking forward to the continuing collaboration with the Commission on this topic.

**Iran** - I would like to briefly point out that the Islamic Republic of Iran recalls its previous remarks on this topic and is of the view that not only there exists a paucity and sparsity of the practice of States in the subject-matter, but also as far as it concerns the previous works of the Commission on the very same topic, it appears that thus far, the international community of states has not yet welcomed the topic of succession of States broadly... As regards, the “Vienna Convention on succession of States in respect of treaties” of 23 August 1978 has only 19 Signatories and 23 Parties and the “Vienna Convention on succession of States in Respect of State Property, Archives and Debts” of 8 April 1983 has only 7 parties and has not yet entered into force. Furthermore, the 2001 “Draft Articles on Responsibility of States for Internationally Wrongful Acts” is among those ILC products that are still pending before this Committee. That being so, it seems the time is not yet ripe enough to constitute the basis for choosing the title of “draft articles” for the topic under consideration.

**El Salvador** - In the absence of constant practice between States, its codification is inevitably difficult; However, this does not prevent the important contribution of this draft provision from being appreciated; and guidance that this entails providing to the international community.

**China** The research on this topic is quite difficult, mainly because state practice is relatively scarce, and each has its own special political and geographical background, which is not universal.

**Cuba** - At the same time we consider that there is a dearth of state practice on state succession in relation to State Responsibility. This undoubtedly makes it difficult to establish a position from a legal perspective, as there are no decisions from national and international courts and tribunals that contribute in a decisive manner on this issue.

#### **Future work:**

**Viet Nam** - Furthermore, we reiterate the need for a comprehensive review of State practice in order to prove useful in situations of succession. Taking into account the scarcity of State practice regarding the treatment of succession of States, my delegation highly appreciates the Special Rapporteur’s efforts to study relevant state practice. However, we would like to express our hope that a wider range of additional relevant cases from different continents will be examined so that the work on this topic be comprehensive and consistent.

**Portugal** - Given the scope of Draft Guidelines 11 and 14, there does not appear to be a defensible reason for using different methodologies and terminology in the two Draft



Guidelines... Furthermore, in both draft guidelines, the only relevant element for the formation of two or more successor States is the parts of the territory of the predecessor State. It is well known that, in addition to the qualification of a "defined territory," States must usually have a permanent population. Therefore, the question arises whether an existing sovereign state that incorporates the population of the predecessor state is covered by Draft Guideline 10bis, paragraph 1, and Draft Guideline 13bis, paragraph 1. Finally, it is not clear what "particular circumstances" may justify one or more successor states being entitled to invoke the responsibility of the wrongdoing state under Draft Guideline 14. Therefore, we would welcome additional clarification in this regard.

**Portugal** - In what concerns Draft Guideline 12, it is not entirely clear whether the reference to "a successor State" includes the same situation addressed in draft Guideline 13. However, it seems unlikely that this is the case. Therefore, Portugal would welcome further clarification on the exact scope of these two provisions and their interaction.

**Portugal** - With regard to the importance of the concept of equity in the division of responsibilities among successor States, Portugal joins those who consider it an indispensable mechanism. However, we also consider important to examine more closely how the concept has been used in the various historical examples of State succession, given the underlying uncertainty of the concept. This may be of particular importance when a decision is to be made on how to proceed with the division of responsibility if the States concerned have not done so at the time of the succession.

**Norway – Nordic countries** - In his fifth Report the Special Rapporteur has focused primarily on situations where there are several injured successor States and/or multiple responsible successor States. No new provisions were proposed this time. The Report is written with the conclusion of a first reading in sight and also gives some ideas for the structure of the future final outcome on this topic. Together with this Report, the summary of the work accomplished so far in Chapter VII of the Commission's 2022 Report forms a good basis for further work on this topic. However, this time we would like to refer to our earlier comments on this topic and look forward to providing additional detailed comments on the substance as the work progresses further.

**Malaysia** - Further, although Malaysia could support the inclusion of draft guideline 15, Malaysia recommends that the Commission could provide further clarification on situations where exception to the general requirements of continues nationality in the commentary for clarity purposes and implementation of the present guidelines.

**The Netherlands** regrets that, to date, no addendum has been published to correct the errors in the Fourth Report of the Special Rapporteur on succession of States in respect of State responsibility. The Netherlands wishes to remind the Secretary-General that, as also reflected in the aforementioned Note Verbale, this was not the first time that a report by a Special Rapporteur incorrectly reflected a position of the Netherlands. While Special Rapporteurs are independent experts, remarks of the Member States of the United Nations on their work should be taken into account and correctly reflected...A

product of the International Law Commission (ILC) that enjoys no or very little support among the Member States of the United Nations will fail to do justice to the purposes of the Commission. That requires, at least, a correct reflection of the positions of the Member States. It also requires that these positions are duly considered and that the Special Rapporteur, the Drafting Committee of the ILC, and the ILC as a whole assess and appreciate the extent of support for their proposals among the Member States of the United Nations.

**Malaysia** - Draft guideline 12 confirms that the position of the predecessor State is not affected by the succession of States. Malaysia is of the view that paragraph 2 is ambiguous about the circumstances in which a successor State may be able to invoke the responsibility of the State that committed the wrongful act due to the usage of the term “particular circumstances”. At this juncture, the only situation that comes to mind is when there is a connection between the injury to the predecessor State before the date of succession and the territory or the nationals that became those of successor State upon the succession. Other than the situation envisaged, Malaysia seeks clarification on any other circumstances that may warrant an invocation by the successor State...Malaysia notes the Drafting Committee’s view that such specificity was not necessary in the provision, and that the meaning of “particular circumstances” would be explained further in the commentary. However, Malaysia believes that if there is only one situation which is foreseen to occur, that situation should be spelt out in the provision. Otherwise, the generality of the term “particular circumstances” would leave room to differing interpretation which may pose difficulties in its implementation.

**Malaysia** - However, with regard to whether a successor State would be responsible for a wrongful act that commences with the predecessor State and continues with the successor State, Malaysia believes that the provision should be open to further discussion and deliberation as currently, it is dealt with on a case to case basis and there is no clear guidance on the issue. Before the provision is adopted, it must first be determined whether such a composite act is possible under international law.

**Brazil** acknowledges that a case-by-case analysis will usually be required to ascertain how best to apply the general rules of state responsibility in situations of succession of states. However, the proposed draft guidelines 10, 10bis and 11, on uniting of states, incorporation of a State into another State and dissolution of a State could provide additional legal clarity or guidance on the matter. Given that the draft is intended to be applied in the absence of any different solution agreed upon by the States concerned, there seems to be little added value in limiting the guidelines to encouraging States to solve the issue by negotiation.

**Brazil** would also welcome an additional analysis of the interplay between, on the one hand, guidelines 10 and 10bis(1), which apply when an internationally wrongful act has been committed by the predecessor State, and, on the other hand, guidelines 13 and 13bis, which apply when the predecessor State is the injured State. The rights to which the injured State is entitled under the secondary rules of State responsibility necessarily

entail corresponding obligations owed by the State that committed the internationally wrongful act. It is thus unclear why succession of rights would be recognized by draft guidelines 13 and 13bis, whereas succession of obligations would not be recognized by draft guidelines 10 and 10bis (1). Additional clarification on the reasons for the difference of treatment foreseen in draft guidelines 10bis (1) and (2) would also be forthcoming. Whereas the latter provides for the responsibility of the incorporating State when it committed an internationally wrongful act prior to incorporation, the former only provides for negotiations with the incorporating State when the incorporated State committed a wrongful act. Additionally, Brazil would also welcome further clarification on draft guideline 15bis, which addresses cessation and non-repetition, especially on how it may affect the 2001 draft articles on responsibility of States for internationally wrongful acts.

**Croatia** - In further consideration of this topic, the Commission should pay attention, *inter alia*, to the situations in which part or parts of the predecessor State that would become the successor state could bear responsibility for international illegal acts committed not only towards/against third States, but also towards/against other successor states of the former common state.

#### **\*Commentary**

Cameroon - My delegation welcomes Guidelines 7 and 7 bis which follow the arrangement of articles 14 and 15 of the articles on responsibility of States for internationally wrongful acts. It is not too much to note that the ICJ has referred to such situations, *inter alia*, in the Advisory Opinion of 21 June 1971 in the Case Concerning the Legal Consequences for States of the Continued Presence of South Africa in Namibia and the ICJ followed suit in the Case Concerning the United States Diplomatic and Consular Staff in Tehran. However, my delegation would suggest that a differentiation between continuing and instantaneous acts with continuing effects, as highlighted by the Italian Government in the Moroccan Phosphates Case, should be incorporated into this framework. The Commission under the European Convention on Human Rights (ECHR) also made this distinction in the *de Courcy v. United Kingdom* case.

**Cameroon** - In the case of the instantaneous State act, the latter does not extend over time; it is sufficient to verify whether the international obligation allegedly breached by the act of the State is in force in respect of the latter in order to determine whether or not there has been a breach. With regard to a continuing State act, there will be a continuing breach during and only for the duration of the simultaneity between the continuing act and the force of the obligation, that is to say, for as long as there is a coincidence between the spread over time of the State act complained of and the force of the obligation. In my view, any rule which refers to the wrongfulness or lawfulness of a legal act or to the conditions of its validity applies to acts performed while the rule is in force. In the absence of any indication to the contrary, the temporal scope of application of a norm of international law is determined in accordance with the general principle of

law according to which every fact, every act and every situation must be assessed in the light of the rules of law contemporaneous with it.

**Cameroon** –My delegation also notes in this connection that, in order to conclude that an act of a State violates an international obligation, the allegedly violated provision must first be in force vis-à-vis the State concerned at the time of the conduct concerned, in accordance with the maxim *nullum crimen sine lege*. The time factor has an effect on the evolution of the rules of international law, as the maxim *tempus regit factum* indicates. For my delegation, the question of the interaction between the evolution of law and the breach of the international obligation thus posed must be resolved with this fundamental principle in mind.

**Cuba** - We advocate maintaining consistency in the Commission's work with respect to the work already done, in particular in relation to the articles on state responsibility for wrongful acts, both in terms of terminology and substance.

### **Plurality of states**

**El Salvador** - 2. Given the two aspects set forth in the fifth report of the Special Rapporteur, my delegation believes that:

- o Regarding the Plurality of States, we support the approach that the Rapporteur undertook regarding the examination of this variable, since in effect it does not suppose rewriting the right of international responsibility or raise general issues that are not related to responsibility in situations of State succession.

- o We understand the complexities that the analysis of this specific topic entailed in the draft articles and for this reason we consider that it would be useful to clarify in the draft corresponding comment that the particular aspects of the existence of various States in cases of continuous or compound facts can be resolved by appealing to the general norms relative to the responsibility of the State. By reflecting the clarification of this point in the comments projects it will be possible - in this way - define an interpretation guide in this regard.

### **General**

**Thailand** is of the view that evidence of State practice on this particular topic has yet to be sufficiently established. In this regard, it would be useful to indicate clearly which draft guidelines are based on State practice and which reflect progressive development of international law.

**Estonia** - We also appreciate that the Special Rapporteur has taken into account previous work of the Commission so that the consistency of the ILC's work throughout the topics

is guaranteed.... We welcome that the Special Rapporteur has used the draft articles on responsibility of States for internationally wrongful acts as bases and has focused on clarifying how these rules operate in the specific factual scenario of succession of States. We would therefore not be in favour of the option revealed in the debate in the plenary meetings of the Commission to reconsider the number and structure of the draft articles on the content and form of legal consequences arising from State responsibility in the context of succession of States proposed by the Special Rapporteur. Our preference here would be to follow the structure chosen in the articles of state responsibility for internationally wrongful acts for the sake of clarity and comparability.

**Slovenia** - On the text of the draft guidelines and commentaries thereto provisionally adopted by the Commission at its seventy-third session, Slovenia generally supports these guidelines and commentaries...Some of the proposed guidelines are straightforward and rest exclusively on the rules of State responsibility with elements of succession added only for further clarification, for example paragraphs, 1 and 2 of Guideline 7 bis; paragraph 2 of Guideline 10 bis; paragraph 1 of Guideline 12 and so forth. Since, as mentioned, they rest on existing rules and state practice, such guidelines should be adopted without much ado...Some of the proposed guidelines fall into the area of progressive development, for example, paragraph 3 of Guideline 7 bis; Guideline 10; paragraph 1 of Guideline 10 bis... In our opinion, the rationale for these proposed guidelines is aptly described by the provisionally adopted commentaries. Furthermore, the Special Rapporteur has found a solid foundation with the use of "without prejudice" clauses and the priority of agreements among concerned States.

#### **\*ARSIWA and SSSR**

**USA** - With respect to the draft guidelines that were provisionally adopted in the last session, the United States agrees with the principle that the guidelines, where possible, should track the 2001 draft articles on State responsibility. Similarly, using formulations that track multilateral conventions where possible is also encouraged, as in draft guideline 14's utilization of the definition of "dissolution of a State" in terms used by article 18 of the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts

**Turkey** - We observe that the reports make reference to the articles on responsibility of States for internationally wrongful acts. However, we emphasize that the concerned articles are still considered as open to discussion, specifically as regards whether and to what extent they reflect customary international law. In that regard, we also would like to point out that we do not agree with the conclusion in paragraph 14 of the fifth report that draft articles 16 to 19 reflect existing international law.

**Slovakia** - 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.

**Sierra Leone** - As a general matter, partly for reasons of legal certainty and predictability, my delegation considers that it remains vital that the guidelines proffered by the Commission stay consistent with the general regime of responsibility for States for internationally wrongful acts as reflected in the now widely used work of the Commission completed in 2001. We further consider that the draft guidelines should remain non-binding and subsidiary to any agreements concluded by the States concerned.

**Romania** - Applying the customary law on responsibility of States for internationally wrongful acts remains of paramount importance when dealing with the particular situation of State succession. From this perspective, we welcome the reliance on the 2001 Draft articles on State responsibility, in the commentaries to the guidelines adopted by the ILC at this session.

**Portugal** - We also take good note of the assurances given by the Special Rapporteur that it is not his intention to question or rewrite the general rules on State responsibility. Although the 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts have not yet been adopted as an international convention, many international tribunals, including in the context of investor-State disputes, have relied on them in their decisions. The draft articles have proven to be a useful international tool. Portugal therefore believes that they should be used as one of the starting points for analyzing international responsibility in the context of state succession. Therefore, any attempt to revise or rewrite them should be avoided.

**Estonia** - We welcome that the Special Rapporteur has used the draft articles on responsibility of States for internationally wrongful acts as bases and has focused on clarifying how these rules operate in the specific factual scenario of succession of States. We would therefore not be in favour of the option revealed in the debate in the plenary meetings of the Commission to reconsider the number and structure of the draft articles on the content and form of legal consequences arising from State responsibility in the context of succession of States proposed by the Special Rapporteur. Our preference here would be to follow the structure chosen in the articles of state responsibility for internationally wrongful acts for the sake of clarity and comparability.

**Malaysia** - My delegation also reiterates our support on the general view of the Special Rapporteur that this topic must preserve consistency, in terminology and substance, with the previous works of the Commission. Specifically, Malaysia agrees that the topic should be consistent with the articles on Responsibility of States for Internationally Wrongful Acts 2001 that are largely considered as reflecting customary international law.

### **PART III**

**Estonia** - We welcome that the Special Rapporteur has used the draft articles on responsibility of States for internationally wrongful acts as bases and has focused on clarifying how these rules operate in the specific factual scenario of succession of States. We would therefore not be in favour of the option revealed in the debate in the plenary meetings of the Commission to reconsider the number and structure of the draft articles on the content and form of legal consequences arising from State responsibility in the context of succession of States proposed by the Special Rapporteur. Our preference here would be to follow the structure chosen in the articles of state responsibility for internationally wrongful acts for the sake of clarity and comparability... Regarding the substance of these articles, as we have stated previously, we welcome to twofold approach and support the inclusion of articles on reparations for the injured States and on the guarantees of non-repetition. Furthermore, we find it important, as has been mentioned by the Special Rapporteur in his fourth report, that even if the full reparation remains the general rule of customary law the States concerned may arrive at an agreement that provides less than full reparation.

#### **\*Equity**

With regard to the importance of the concept of equity in the division of responsibilities among successor States, Portugal joins those who consider it an indispensable mechanism. However, we also consider important to examine more closely how the concept has been used in the various historical examples of State succession, given the underlying uncertainty of the concept. This may be of particular importance when a decision is to be made on how to proceed with the division of responsibility if the States concerned have not done so at the time of the succession.