

## Topic: Succession of States in respect of State Responsibility

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1. State Succession in respect of State Responsibility agenda item was elevated to the active agenda of the Commission in 2017, during which Special Rapporteur Mr. Pavel Šturma presented his first report.<sup>2</sup>
2. According to the Special Rapporteur, the present topic dealt with the *Succession of States in respect of State Responsibility*. The aim of examining the topic was to explore the question whether there are rules of international law governing both the transfer of obligations and the transfer of rights arising from international responsibility of States for internationally wrongful acts particularly in situations of succession of States. The scope of the topic excluded the issues of international liability for injurious consequences arising out of acts not prohibited by international law and also the questions of the succession in respect of the responsibility of international organizations. The States commended the Commission for its decision to look into this important<sup>3</sup> but not yet sufficiently examined topic, which would fill a gap in international law.<sup>4</sup> Also few states noted the complexity of the topic due to the limited State practice.<sup>5</sup>

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<sup>1</sup> I express appreciation to my research team led by Digvijay Rewatkar, RRU Center for International Law and research assistants, Suraj Saikia, Varun VM, Ananya Prakash, Pratuysa and Sunand Subramaniam for their research assistance for this and other topics. The statement is prepared in English and will be translated into Arabic, Chinese, French, Russian and Spanish, using open-source translation tools. Hindi translation will be made available for wider promotion of studies and research in international law. English language version is authentic. Any linguist or grammar errors are regretted.

<sup>2</sup> Official Records of the General Assembly, Seventy-First Session, Sixth Committee, 21st Meeting, UN Doc. A/C.6/71/SR.21), para 43.

<sup>3</sup> Pavel Šturma, (2017) First Report on Succession of States in respect of State Responsibility, UN Doc. A/CN.4/708.

<sup>4</sup> *Ibid*, para 3.

<sup>5</sup> Pavel Šturma, (2018) Second Report on Succession of States in respect of State Responsibility, UN Doc. A/CN.4/719, para 4.

3. The second report (2018)<sup>6</sup> addressed the issues of transfer of the obligations arising from the internationally wrongful act of the predecessor State. It distinguished cases where the original State had disappeared (dissolution and unification) and cases where the predecessor State remained (territorial transfer, secession and newly independent States). The third report (2019)<sup>7</sup> focussed on the transfer of the rights or claims of an injured predecessor State to the successor State. The fourth report (2020)<sup>8</sup> addressed the impact of succession of States on forms of international responsibility of States.<sup>9</sup> The final report in 2022 addressed the plurality of successor States and aspects of restructuring the provisions.<sup>10</sup> As far as the outcome of the topic was concerned, it was sought to have elements of both, codification and progressive development of international law.
4. Through the previous quinquennium, the Special Rapporteur raised several fundamental issues which were deliberated by the Commission. The Special Rapporteur in his work attempted to ensure the completeness of the work by incorporating the suggestions made by the members of the Commission and the member States.<sup>11</sup> I would like to summarise the key issues for the benefit of the Commission, and particularly the new Members such as myself:
5. **First, need to study State Practice as comprehensively as possible** – A concern that emerged during the discussion relates to the limited availability and variety of State practice, and as a result, the nature of the provisions outlined in the draft guidelines. Several member States noted, in line with the Special Rapporteur's recognition, that there was a scarcity of relevant State practice that was specific to certain contexts, they reached different conclusions. Few member States expressed

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<sup>6</sup> *Ibid.*

<sup>7</sup> Pavel Šturma, (2019) Third Report on Succession of States in respect of State Responsibility, UN Doc. A/CN.4/731.

<sup>8</sup> Pavel Šturma, (2020) Fourth Report on Succession of States in respect of State Responsibility, UN Doc. A/CN.4/743.

<sup>9</sup> Pavel Šturma, (2017) First Report on Succession of States in respect of State Responsibility, UN Doc. A/CN.4/751

<sup>10</sup> Pavel Šturma, (2022) Fifth Report on Succession of States in respect of State Responsibility, UN Doc. A/CN.4/751.

<sup>11</sup> Viet Nam, USA, UK, Turkey, Thailand, South Africa, Slovenia, South Africa, Singapore, Sierra Leone, Russian Federation, Republic of Korea, Romania, Portugal, the Philippines, Norway / Nordic countries; Malaysia, Iran, Greece, El Salvador, Czech Republic, Croatia, Brazil, Cameroon, Colombia expressed / commanded the work of the Special Rapporteur and made specific suggestions / observations with regard to the appointment of new Special Rapporteur. <https://www.un.org/en/ga/sixth/77/ilc.shtml>

doubts about the existence of a trend towards the formation of rules of international law in respect of the topic. However, as emphasized in the third report by the Special Rapporteur, the lack of definitive State practice does not imply that the responsibility for an internationally wrongful act ceases with the occurrence of State succession. On the contrary, these rules still remain applicable, although their implementation may be influenced by the process of State succession.

6. **Theory of automatic succession v. non-succession** - The primary source of debate was whether generally, State succession permits / denies the transfer of legal rights and obligations to the Successor state. The Special Rapporteur acknowledged that most doctrine in the past, and most authors assert that there is no transfer of obligation from international responsibility to a Successor state.<sup>12</sup> However, he relied on State practice, predominantly from Central and Eastern Europe from the 1990s to advance the proposition that there is increasing practice in favor of succession of obligations and rights. Some members raised doubts as to whether the State practice was sufficient to show a shift from theory of non-succession to succession.<sup>13</sup> In this regard, several member States emphasised that the future reports shall consider practice from regions other than the Central and the Eastern Europe.<sup>14</sup> The general rule of non-succession must be respected. The few exceptions to that rule could not be allowed to undermine the priority to be given to agreements between the States concerned with regard to succession to State responsibility, as underlined by Mr Nguyen and several members of the Commission and as welcomed by the States in the 6<sup>th</sup> Committee.
7. **Consistency with the Vienna Conventions of 1978 and 1983** - Most delegations pointed out that the work of the topic should maintain consistency, in substance and terminology, with its earlier work, namely with the Vienna Convention on Succession of States in respect of treaties (1978) and Vienna Convention regarding State property, archives and debts (1983).<sup>15</sup> However, the matter of consistency has broader implications as well. For instance, the provisions outlined in the Vienna

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<sup>12</sup> Pavel Šturma, (2017) First Report on Succession of States in respect of State Responsibility, UN Doc. A/CN.4/708 [para. 32]

<sup>13</sup> Pavel Šturma, (2018) Second Report on Succession of States in respect of State Responsibility, UN Doc. A/CN.4/719. [para. 2]

<sup>14</sup> Ibid

<sup>15</sup> ILC Special Rapporteur, Fourth Report, 2021, para. 8.

Convention regarding State property, archives, and debts in the context of State succession can be considered closely connected to those concerning obligations stemming from internationally wrongful acts. It is important to note that these regulations specify that the matter should be resolved through agreement between the involved States. In cases where such an agreement is absent, such as in situations of State dissolution, separation, cession, or territorial transfer, the debts of the previous State are distributed among the successor States in a fair proportion, taking into consideration the property, rights, and interests that have been transferred to them in relation to that State debt.<sup>16</sup>

8. **Second, relevance of Agreements between Predecessor and Successor States (Sometimes Third States)** - The Special Rapporteur also noted that rules on State responsibility and treaties are different, thereby reducing the importance of the *pacta tertiis* rule. With regards to devolution agreements, the Special Rapporteur provisionally summarized that the *pacta tertiis* rule applies – since it is an agreement between the predecessor and successor States.<sup>17</sup> Regarding the Claims agreements, he provisionally concluded that the *pacta tertiis* rule does not apply.<sup>18</sup> He considered but cautioned against drawing any conclusion with respect to all other agreements (most heterogeneous) at such an early stage.<sup>19</sup> Lastly, with respect to relevance of unilateral acts by successor States, he proposed that clearly stated terms must give rise to succession of rights and obligations.
9. **Third, impact of Succession on Transfer of obligations arising out of internationally wrongful acts** - The 2018 Report examined the impact of State succession on the transfer of obligations arising from internationally wrongful acts committed by the predecessor State. The Special Rapporteur made it clear that the State succession is absent in cases of establishment of successor State through illegal means. While exploring attribution, the Special Rapporteur found exceptions in cases where there is a continuing breach and in the events of insurrectional movements. The report presented State practice to show situations where

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<sup>16</sup> Id at para. 17.

<sup>17</sup> Pavel Šturma, (2017) First Report on Succession of States in respect of State Responsibility, UN Doc. A/CN.4/708 [para. 99]

<sup>18</sup> Ibid. para. 103

<sup>19</sup> Ibid para. 110

obligations arising from responsibility may be demanded from the successor state, even if the act remains attributable only to the predecessor.

10. **Fourth, succession when Predecessor State Exists** - First, the question of whether the successor State should be considered a continuator of the predecessor State or a new State, arises. The Special Rapporteur showed that the majority view supports the continuity of predecessor State while others argue for it being a new State. Second, the Special Rapporteur found that the successor State is not automatically responsible for obligations arising from internationally wrongful acts committed by the predecessor State solely since such acts occurred on its territory – linkage is considered only as one relevant element. Third, as far as insurrection is concerned, the Special Rapporteur presented evidence of policy, state practice and legal doctrine to show that successor States are responsible for actions caused by insurrection movements which led to the eventual government.
11. **Fifth issue, succession when Predecessor State ceases to exist** - The Special Rapporteur found that, first in case of unification, there is a general presumption that obligations arising from internationally wrongful acts of the predecessor State pass to the successor State, unless otherwise agreed upon. Second, in the context of dissolution, the rights and obligations surely pass on to the successor States, however it remains unclear to which successor State and to what extent they pass. States expressed concerns over scarcity of State practice, the Special Rapporteur agreed to the limited, diverse, context-specific State practice. General consensus has been that theory of non-succession must not be replaced by an invasive theory of succession. Rather, it must remain flexible and case-specific. Some States expressed reservations on the method of developing “draft articles”. Delegates requested more detailed commentary to the draft articles.
  1. **Sixth, reparations** - The main source of disagreement came with the right to reparation when an internationally wrongful act is committed against the nationals of the predecessor State. The Special Rapporteur presented theoretical and practical instances to show the existence of a rule of continuing nationality as a traditional condition in the law of diplomatic protection. However, the Special Rapporteur rejected the strict and absolute interpretation. He argued that with

modern State practice, case law and doctrinal views, there is an exception to the rule of continuing nationality in cases of State succession. There is a need to 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.

12. **In summary, the report assures that a priority is given to the agreements between the States concerned.** Succession should be carried out on the basis of committed negotiations, in a free-will manner, and in an appropriate timeframe. It is further clarified that automatic succession is not be applied in any case, particularly with respect to rights and obligations arising from a wrongful act of the predecessor States.
13. In the most recent session on the agenda in 2022, the Drafting Committee provisionally adopted the draft guidelines 7 *bis*, 12, 13, 13 *bis*, 14, 15 and 15 *bis* on the topic. Draft guidelines 1, 2, 5, 7, 8 and 9, earlier adopted in the form of draft articles, were adopted in the form of draft guidelines provisionally.<sup>20</sup>

### Future Scope of the Work

14. In the 5<sup>th</sup> report of the Special Rapporteur as well as the meetings of the Drafting Committee, the ultimate decision was regarding the conversion of draft articles on State Succession in Respect of State Responsibility into draft guidelines.<sup>21</sup> Accordingly, the Drafting Committee proceeded to prepare draft guidelines on the basis of the texts referred to it by the Commission at the previous sessions. The Drafting Committee provisionally adopted draft guidelines 1, 2, 5, 6, 7, 7bis, 8, 9 (previously drafted as articles) as well as 10, 10bis, 11, 12, 13, 13bis, 14, 15 and 15bis.<sup>22</sup>

<sup>20</sup> Seventy-First Session, International Law Commission, UN Doc. A/CN.4/L.939

<sup>21</sup> Pavel Šturma, (2017) First Report on Succession of States in respect of State Responsibility, UN Doc. A/CN.4/751

<sup>22</sup> Several states have provided specific comments, observations and suggestions for clarification or future work on individual guidelines.

Guideline 1 - UK, Viet Nam, Slovenia, Italy, Malaysia, Portugal, Republic of Korea, Singapore

Guideline 6 – Malaysia, Austria, Estonia, Czech Republic, Belarus, Cameroon

Guideline 7 and 7bis - Malaysia, Cameroon, Czech Republic, Greece

Guideline 10- Belarus, Cameroon, Czech Republic

15. **Active participation of States:** All States have appreciated the work of the Commission and agreed the work shall be completed, especially keeping in view the need for clarification to the comments made by a couple of States expressing reservations.<sup>23</sup> As the ILC works keep the need felt by States as one of the cardinal principles, the work shall be brought to a logical conclusion. One important measure of appreciation of the work of the Special Rapporteur and the Commission is the flexibility and approval granted by the member States to change the final outcome from draft articles into draft guidelines as recent as in 2022 session of the 6<sup>th</sup> Committee. It shall be noted that no state has sought to delete any guideline.<sup>24</sup>
16. Throughout the recommended draft guidelines there has been a reference made to agreements entered into by the concerned parties regarding State succession as the primary point of reference. In this regard, an analysis must be made of all agreements mentioned in the Memorandum of the Secretariat<sup>25</sup> in order to trace a state practice in light of these agreements, a focus which has not been emphasized much by the Special Rapporteur. This would assist in *firstly*, understanding the functionality and manner of succession of rights and obligations taken on by the successor States; *secondly* allow us to develop model clauses for the agreements referenced in the guidelines and can be annexed to the agreement, if agreed upon, and *thirdly* help identify some of the best practices undertaken by States in order to further international peace and security and prevent further disputes originating owing to matters concerning State Succession in respect of State Responsibility.
17. The topic has also been addressed in the Asian African Legal Consultative Organisation (AALCO), in this regard it was expressed that the commentaries may provide for some examples of such agreements, and that model clauses could be

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Guideline 11 – Slovenia, Portugal, Belarus, Cameroon, Slovakia, Romania, Malaysia, Italy, Brazil

Guideline 12 – Republic of Korea, Portugal, Malaysia, Greece, Cameroon, Czech Republic

Guideline 13 – Malaysia, Czech Republic

Guideline 14, 15 and 15bis – Slovenia, Slovakia, Portugal, Malaysia, Cameroon, Czech Republic, Brazil

<sup>23</sup> [https://www.un.org/en/ga/sixth/77/pdfs/statements/ilc/30mtg\\_czech\\_3.pdf](https://www.un.org/en/ga/sixth/77/pdfs/statements/ilc/30mtg_czech_3.pdf)

<sup>24</sup> USA, UK, Austria, South Africa, Slovenia, Singapore, Sierra Leone, Romania, Republic of Korea, Thailand, Portugal, Nordic Countries, Malaysia, Italy, France, Estonia, El Salvador, Cameroon, China, Colombia, Croatia, Estonia

<sup>25</sup> <https://documents-delads-ny.un.org/doc/UNDOC/GEN/N19/080/21/PDF/N1908021.pdf>

drafted and used as a basis for negotiation.<sup>26</sup> This position has also been supported in the discussions in the Sixth committee where for example, Portugal expressed that the commentaries to these draft articles should bring added value by including examples of succession agreements between States, as well as model-clauses to be used as a basis for negotiation of agreements on succession with regards to State responsibility. This was also supported by the UK in the 72<sup>nd</sup> session where they stated that an option could be to produce model clauses which States in a succession situation as a starting point for determining where State responsibility lies.<sup>27</sup> This has also been consistently emphasized by Poland and Romania in their statements in the Sixth committee.<sup>28</sup>

18. The primary case against such a manner of further work of the Commission has been the apprehension of drawing general conclusions from particular instruments. However, such an activity is only possible when a comprehensive analysis of a study of available agreements and identification of points of consistent state practice addressing State Succession in respect of State Responsibility in order to draw the most basic principles that would ensure a good faith negotiation and consequent agreement between parties, are undertaken..

### **Studying Asian-African practices on the topic**

19. The fact that most of the examples of State practice cited in chapter III (A) of the report related to just one geographical region did not reflect faults in the Special Rapporteur's methodology or a lack of concern for diversity of viewpoints. The reliance on European examples of succession seemed to be a function of political developments in that region following the break-up of the former Soviet Union.<sup>29</sup> The 2019 memorandum by the Secretariat providing information on treaties which might be of relevance to the future work of the Commission on the topic (A/CN.4/730) had included summaries of only three non-European examples: India and Pakistan; Malaysia and Singapore; and South Sudan and Sudan.<sup>30</sup>

<sup>26</sup> <https://www.aalco.int/59thsession/Final%20ILC%20Brief%202021%20on%2013.10.2021.pdf>

<sup>27</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/319/33/PDF/N2131933.pdf>, [para 68].

<sup>28</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/317/44/PDF/N2131744.pdf> [para 73]

<sup>29</sup> [https://legal.un.org/ilc/documentation/english/summary\\_records/a\\_cn4\\_sr3580.pdf](https://legal.un.org/ilc/documentation/english/summary_records/a_cn4_sr3580.pdf)

<sup>30</sup> [https://legal.un.org/ilc/documentation/english/summary\\_records/a\\_cn4\\_sr3580.pdf](https://legal.un.org/ilc/documentation/english/summary_records/a_cn4_sr3580.pdf)

20. During the debate on the Special Rapporteur's first report at the sixty-ninth session, Mr. Peter had given several examples of succession in Africa (A/CN.4/SR.3379).<sup>31</sup> Due to the various forms of control that foreign Powers had exercised over nearly all African countries, there were varied examples of succession on that continent that should not have been overlooked. Various African countries had negotiated agreements involving the clean slate rule and other legal issues, mostly in the context of decolonization. In addition to examples of succession agreements between African and European countries, there were agreements between Egypt and Syria and between African countries themselves.
21. At the 77<sup>th</sup> session of the Sixth Committee, Viet Nam reiterated 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, a wider range of additional relevant cases from different continents will be examined so that the work on this topic becomes comprehensive and consistent.
22. The Special Rapporteur particularly agreed with the proposed methodology for analysing the topic. In paragraph 13 of the report, the Special Rapporteur stated that the definitions contained in the articles on responsibility of States for internationally wrongful acts and in the 1978 and 1983 Vienna Conventions were applicable to the present topic. However, those definitions should take into account the new global political and legal settings. For example, the case of East Timor, there had been a transitional period of transfer of rights and obligations from the predecessor State to the successor State via the United Nations provisional administration.<sup>32</sup>
23. In determining whether or not there was a general principle guiding the succession of States in respect of State responsibility, the Special Rapporteur seemed to have paid more attention to the views of authors and scholars than to actual State practice in that area, which, in his view, was of prime importance to the topic at hand. When the Special Rapporteur referred to State practice, he gave more attention to cases in Europe than to those in other regions. For instance, five pages

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<sup>31</sup> [https://legal.un.org/ilc/documentation/english/summary\\_records/a\\_cn4\\_sr3580.pdf](https://legal.un.org/ilc/documentation/english/summary_records/a_cn4_sr3580.pdf)

<sup>32</sup> [https://legal.un.org/ilc/documentation/english/summary\\_records/a\\_cn4\\_sr3375.pdf](https://legal.un.org/ilc/documentation/english/summary_records/a_cn4_sr3375.pdf)

of the report were devoted to cases of succession relating to Central and Eastern Europe during the 1990s, while barely one page was given over to cases in Latin America and Asia.<sup>33</sup> The Soviet Union was mentioned in the report as a case of State succession, but it received relatively little attention despite its relevance to the topic. Furthermore, many other relevant cases were absent from the report. And this need to be studied as emphasised by the member States.

24. **Proposed work program:** In order to complete the work on the topic as per the needs and suggestions expressed by the member States and the Commission, the future work shall
- i. retain the structure of the project, namely the division of the guideline (*earlier articles*)s into four parts, as suggested by among others Mr Reinisch. It shall be emphasised that all member States, commenting on this aspect, have expressed preference for the draft guidelines, only one member State had mentioned that the final outcome could be a report.
  - ii. ensure that the draft guidelines, including 1, 2, 5, 7, 8 and 9 that were originally prepared as draft articles and the corresponding commentary, reflect the essence of the provisions, i.e. draft guidelines and with additional analysis of legal doctrine, practice, jurisprudence and legal teachings as suggested among others by Mr Grossman, Mr Vazquez-Bermudez, Mr Forteau, Mr Jalloh, Mr Wood, Mr Park, Ms Galvao Teles, Ms Oral, Mr Ouazzani Chahdi and ensuring references to cases which are relevant and appropriate, as suggested by Mr Huang and Mr Zagaynov.
  - iii. conduct essential research on individual guidelines as suggested by the member States to make the guidelines useful for them and the international community as a whole,
  - iv. reassure consistency with previous works of the Commission including treaties and draft articles, namely the Vienna Conventions of 1978 and 1983,

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<sup>33</sup> [https://legal.un.org/ilc/documentation/english/summary\\_records/a\\_cn4\\_sr3375.pdf](https://legal.un.org/ilc/documentation/english/summary_records/a_cn4_sr3375.pdf)

as well as the Draft Articles on Nationality of Natural Persons in relation to the Succession of States and the Articles on State Responsibility for Wrongful Acts, and

- v. provide bibliography in a comprehensive manner, covering all regions and with full attempt to include bibliography in all six languages.
25. The Commission shall resume the work on the topic. It has received extensive comments and observations from States and have expressed clearly need for continuation of the topic and the final outcome in the form of guidelines at the 2022 meeting of the 6<sup>th</sup> Committee, with few states having different opinion, such as removing the topic from the agenda, reconsidering the usefulness and necessity of continuing work.<sup>34</sup> The Commission in the previous quinquennium and the 6<sup>th</sup> Committee has noted and commented on the draft guidelines. I have studied the comments and suggestions by the member States and members belonging to the current and previous quinquennium on the subject. There is a view to conclude the topic in form of a report attached as an annex to the Commission report. Here, I would like to quote the previous example. “The topics “Fragmentation of international law: difficulties arising from the diversification and expansion of international law” and “The most-favoured-nation clause (Part Two)” had each been completed with an important substantive study and report, but the method of work, namely a study group, had been chosen from the outset. Moreover, the two Study Groups had been given adequate time to complete their work: five and nine years, respectively. Other examples included the Working Group on the topic “Unilateral acts of States”, which, having been established in 1997, had not completed an outcome until 2006. Lastly, the Working Group on the topic “Obligation to extradite or prosecute (*aut dedere aut judicare*)” had been established in

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<sup>34</sup> Austria, Belarus, Cameroon, China, Colombia, Croatia, Cuba, Czech Republic, El Salvador, Estonia, France, Greece, Iran, Italy, Japan, Jordan, Malaysia, Mexico, the Netherlands, Norway (also on behalf of Nordic countries), Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Thailand, Turkey, UK, USA and Viet Nam. Although more member States made written statements, these are not included either due to lack of translation in English and / or statements made no particular suggestions or observations on the topic. <https://www.un.org/en/ga/sixth/77/ilc.shtml>

2012, *in the absence of a special rapporteur and with no member of the Commission ready to assume that responsibility* (emphasis added). Even though the final report on the topic was not of the same nature and quality and had not been finalized until 2014.” As Mr Wood, former member mentioned, one proposal could be to convene *a working group, chaired by the Special Rapporteur, rather than continuing with the Drafting Committee, with the aim of producing a final report*. As Mr Murphy, former member of the Commission suggested the Commission could return to the topic, complete a second reading under the guidance of a new Special Rapporteur. But now this is moot and like all other topics, the guidelines are prepared and submitted, corresponding commentary is also prepared, and the logical solution should be to appoint Special Rapporteur who can incorporate all suggestions of the member States and the Commission and observations and place for the first reading of the Commission in 2024. Let me emphasize that ***this proposal is in line with the principle and practice of the Commission***.

26. This topic has faced certain challenges. Firstly, the final product was envisaged in form of draft articles and in 2022 it was decided to have draft guidelines. Secondly, the last quinquennium has several competing topics – draft conclusions on identification and legal consequences of peremptory norms of general international law; draft principles on protection of the environment in relation to armed conflicts; draft guidelines on the protection of the atmosphere (2021); Guide to provisional application of treaties (2021); draft articles on prevention and punishment of crimes against humanity (2019); draft conclusions on subsequent agreements and subsequent practice in relation to interpretation of treaties (2018); draft conclusions on identification of customary international law (2018). These were concluded in the last quinquennium, only two topics, immunity of state officials from foreign criminal jurisdiction and state succession in respect of state responsibility remained without final conclusion. Special Rapporteurs who are fortunately credited with conclusion of their topics as well as special rapporteurs whose topics remained non-conclusive are no more members of the current quinquennium.

27. Member States and members of the Commission have made suggestions with regard to the future continuation of the topic.
28. During my consultation with re-elected members in the Commission, I noted some sort of uneasiness but no tangible concerns except for the output of the topic – draft articles versus draft guidelines. Let me inform that the 2022 report of the Commission had mentioned only one concern. I quote, “With regard to the topic “**Succession of States in respect of State responsibility**”, the Commission had before it the fifth report of the Special Rapporteur (A/CN.4/751), which primarily addressed the problems relating to a plurality of injured successor States or of responsible successor States.”<sup>35</sup> Any topic, past and present alike that are studied by the ILC always have some elements of complexities and have inherently elements of legal controversy, uncertainty and ambiguity. For example, concerning the issue of the commentary in light of the conversion from draft articles to draft guidelines, as Mr Forteau mentioned, *a sentence indicating that the commentary should be read in the light of the decision to recast the provisions as draft guidelines, rather than draft articles, should be included in all footnotes relating to the commentary.* Furthermore, as Mr Forteau noted that that it had not been possible to complete work on the draft guidelines with a view to adoption on first reading at the 2022 Session, his suggestion that the Commission should follow its usual practice of first recalling the texts adopted at previous sessions and then presenting, in a separate section of the relevant chapter, the new texts adopted at the current session. It is up to the ILC and the Special Rapporteur to ensure that we study the topic objectively and come up final output which is in accordance with the mandate given by the Commission and the member States and remain useful to them and the international community as a whole.
29. **In conclusion**, recognising the extensive research work carried out by the former Special Rapporteur, commendation and appreciation by member States since 2017, huge amount of time, energy and resources devoted in the last six years, appreciating the dedication and assistance extended by the Secretariat, and echoing the need for the utility of the topic expressed and mandate given by the member States and their continuous engagements including agreeing the final outcome on

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<sup>35</sup> ILC report to the General Assembly 2022, para. 17.

the topic, and finally emphasising the principle and practice of the Commission, it is hoped that the work is brought to natural and logical completion in form of guidelines and commentary. I would humbly seek the mandate of the Commission to dutifully conclude the work as the New Special Rapporteur on this topic. I will put all efforts to ensure that the final document becomes a masterpiece work of the Commission like its Articles on Responsibility of States for Wrongful Acts (ARSIWA) and I sincerely hope that new members as well as re-elected members will provide fullest support to achieve the desired results in the spirit of collegiality and cooperation.

30. Thank you.