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SUCCESSION OF STATES IN RESPECT OF STATE RESPONSIBILITY

Statement of the Chairman of the Drafting Committee

Mr. Aniruddha Rajput

31 July 2017

Mr. Chair,

It gives me great pleasure to introduce the seventh and last report of the Drafting Committee for the sixty-ninth session of the International Law Commission. This interim report concerns the topic “Succession of States in respect of State responsibility” and is contained in document ILC(LXIX)/DC/SOSR/CRP.1, which reproduces the text of the draft articles provisionally adopted by the Drafting Committee at the present session.

Following the referral to the Drafting Committee of draft articles 1 to 4, on 25 July 2017, one meeting was held by the Drafting Committee on the same day. It should be recalled that, upon summing up this year’s debate on the topic in the Plenary, the Special Rapporteur recommended that draft articles 3 and 4 remain in the Drafting Committee until the next session, when members of the Commission will have a clearer picture of residual rules on non-succession and succession to be proposed in the second report. My statement today is, accordingly, presented in the form of an interim report, intended to provide the Commission with information on the progress made in the Drafting Committee so far.

During the meeting held on 25 July to consider the draft articles relating to this topic, the Drafting Committee therefore limited itself to the consideration of the two first draft articles initially proposed by the Special Rapporteur in his first report (A/CN.4/708), together with a number of suggested reformulations that were presented by the Special Rapporteur to the Drafting Committee in order to respond to suggestions made, or concerns raised, during the debate in Plenary.

Before addressing the details of the report, let me pay tribute to the Special Rapporteur, Mr. Pavel Šturma, whose mastery of the subject, guidance and cooperation greatly facilitated the work of the Drafting Committee. I also thank the members of the Drafting Committee for their active participation and valuable contributions to the successful outcome. Furthermore, I also wish to thank the Secretariat for its valuable assistance.

Draft article 1 – Scope

Mr. Chair,

Let me first turn to draft article 1.

Draft article 1 deals with the scope of the draft articles being developed by the Commission, and reads as follows “The present draft articles apply to the effects of a succession of States in respect of the responsibility of States for internationally wrongful acts.” While the English version of the title was adopted as originally proposed, the French version was changed to “*Champ d’application*” in line with the practice of the Commission.

The only change made to the text of draft article 1, as proposed in the first report, is the use of the plural for the term “effects”. This change was deemed appropriate to align the text of draft article 1 with the text of the 1978 Vienna Convention on Succession of States with regard to Treaties and of the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts.

An exchange of views took place as to whether it would be appropriate to refer to rights and obligations rather than to responsibility of States for internally wrongful acts. The Drafting Committee considered that the reference to the latter, as proposed in the first report, was to be retained since it reflected the title of the topic and was consistent with the 1978 and 1983 Vienna Conventions on Succession of States. Furthermore, as was clarified in the first report of the Special Rapporteur ‘rights’ and ‘obligations’ are implicit and need not be separately mentioned. It is understood that the use of the term “responsibility of States” does not suggest that the successor State is necessarily responsible for an internationally wrongful act, and this will be clarified in the commentary. This commentary will also stress the importance of the concept of rights and obligations in the context of the topic.

Draft article 2 – Use of terms

Mr. Chair,

Let me now turn to draft article 2, which is entitled “Use of terms” in English, as proposed in the first report, and “*Expressions employées*” in French. The French title was amended for the sake of consistency with the practice of the Commission.

Draft article 2 comprises four subparagraphs at this stage. The terms “succession of States”, “predecessor State”, “successor State” and “date of the succession of States” are defined respectively under subparagraphs (a), (b), (c) and (d). These subparagraphs were adopted as proposed in the first report by the Special Rapporteur. They are consistent with the definitions set forth in the 1978 and 1983 Vienna Conventions and in the articles on nationality of natural persons in relation to the succession of States.

As indicated by the Special Rapporteur at the conclusion of the plenary debate, it appeared that the definition of the term “international responsibility” proposed under subparagraph (e) in the first report was not necessary and that the Commission should limit itself to the uncontroversial definitions of the 1978 and 1983 Vienna Conventions. Therefore, following this suggestion by the Special Rapporteur, the Drafting Committee

did not retain subparagraph (e). Both concepts of State responsibility and internationally wrongful acts will be explained in the commentary.

Let me also remind members of the Commission that draft article 2 remains open and that additional terms may be defined therein in the future as work on the topic progresses.

Mr. Chair,

This concludes my introduction of the sixth report of the Drafting Committee for the sixty-ninth session. I wish to confirm that the Commission is not, at this stage, being requested to act on the draft articles, as this report has been presented for information purposes only.

Thank you.

Annex

SUCCESSION OF STATES IN RESPECT OF STATE RESPONSIBILITY

Draft articles provisionally adopted by the Drafting Committee on 25 July 2017

Article 1

Scope

The present draft articles apply to the effects of a succession of States in respect of the responsibility of States for internationally wrongful acts.

Article 2

Use of terms

For the purposes of the present draft articles:

- (a) “succession of States” means the replacement of one State by another in the responsibility for the international relations of territory;
- (b) “predecessor State” means the State which has been replaced by another State on the occurrence of a succession of States;
- (c) “successor State” means the State which has replaced another State on the occurrence of a succession of States;
- (d) “date of the succession of States” means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;

[...]