Permanent Mission of India to the UN
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6th Committee of the 78th Session of the UNGA
(Agenda item 79)
Report of the International Law Commission on the work of its seventy-third and seventy-fourth sessions

(Cluster III)

India Statement

Mr. Chairman,

My delegation's focus today would be on the topics "Subsidiary means for the determination of rules of international law and "Succession of States in respect of State responsibility".

On Subsidiary means for the determination of rules of international law, we welcome addition of the topic to the Commission's long-term programme of work. We would like to express our deep appreciation for the efforts of the Special Rapporteur, Mr. Charles Chernor Jalloh, in compiling his introductory report on the topic outlining the scope of work, draft conclusions and proposed issues for consideration by the Commission.

My delegation recognizes the importance of the topic and believes that future work on the topic would contribute to the progressive development of international law and would be in line with the other studies of the Commission on the sources of international law. However, while dealing with the topic, the Commission should take into account the limitations applicable to subsidiary means, particularly those set out in Article 59 of the Statute of the International Court of Justice.

Furthermore, the Commission's work on the topic should be rigorous, prudent, inclusive and balanced. It should be focused on the consideration of Article 38 of the Statute of the International Court of Justice and a wide range of State practice.

In this context, we are of the opinion that the most important issue to be addressed is whether the subsidiary means are limited only to judicial decisions and teachings of the most highly qualified publicists of the various nations or whether they also encompass additional subsidiary means, taking into account the non-exhaustive nature of Article 38, paragraph 1 (d), of the Statute of the International Court of Justice and more importantly, the practices of States and international courts and tribunals.

We all are aware that there is uncertainty on some aspects of subsidiary means and their relationship to the sources of international law. There is also debate on the nature and place of judicial decisions in the determination of rules of international law as well as similar issues with respect to the role of teachings of the most highly qualified publicists of the various nations. Consequently, it becomes imperative for the Commission to bridge the gap in the clarity, predictability and uniformity on the subsidiary means for determination of rules of international law.

We look forward to the progress of work on the topic especially relating to the role played by the works of jurists or publicists , State-created or State-empowered bodies and private expert bodies as well as regional and other codification bodies, as subsidiary means in the determination of the rules of international law.

Mr. Chairman,

Turning to the topic "Succession of States in respect of State responsibility", we congratulate Mr. August Reinisch on his appointment as Chair of the Working Group to be established at the seventy-fifth session of the Commission.

We commend the efforts of the Special Rapporteur Mr. Pavel Sturma in compiling his five Reports on the topic. The Special Rapporteur has very aptly focused on the problems relating to plurality of injured successor States or of responsible successor States in the context of succession with particular emphasis on the issue of shared responsibility, besides restructuring Draft Articles into Guidelines.

We take note of the proposed structure of Draft Guidelines as presented by the Rapporteur in four parts under titles: I. General Provisions; II. Reparation for injury resulting from internationally wrongful acts committed by the predecessor State; III. Reparation for injury resulting from internationally wrongful acts committed against the predecessor State; and IV. Content of international responsibility.

We also take note of the proposals incorporated by the Rapporteur and pending with the Drafting Committee particularly in relation to the definition of "States Concerned" in draft guideline 2 paragraph (e); No effect upon attribution under renumbered draft guideline 4; Composite acts under renumbered draft guideline 6 (earlier numbered as 7 bis); Scope of application of Part II of draft Guidelines as well as the entirety of Part III and IV of the draft Guidelines.

We have further taken note of the conclusion drawn by the Special Rapporteur with regard to the issue of plurality of States involved in continuing or composite acts under the topic of succession of States in respect of State responsibility.

In our view, the Drafting Committee needs to further examine the issues related to shared responsibility when a predecessor State continued to exist and also when the obligation of cessation applied in case of a composite act or a continuing act which occurred during the succession process.

We conform to the view regarding the subsidiary nature of the draft Guidelines on Succession of States in respect of State Responsibility and that priority should be given to agreements between the States concerned.

At the same time we are of the view that there is a need to take into consideration geographically diverse sources of state practice and highlighting them so as to describe the relationship between State practice and each Draft Guideline. This would clearly show the draft Guidelines which were supported by State practice and those Draft Guidelines which constituted progressive development of International Law