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Delegation of the Republic of Korea

Report of the International Law Commission on the work of its seventy-second session (Agenda 82)

Sixth Committee, 76th session of UNGA

New York

Cluster 3: Succession of States in respect of State Responsibility and General Principles of Law

Madam Chair,

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 Sturma for presenting his fourth report, and all ILC members for their valuable contributions to this important topic.

My delegation recalls its statement on the topic in the 73rd Session of the General Assembly, expressing its view that an agreement between the parties should be considered in priority when dealing with State Succession in respect of State responsibility. This idea is already reflected in draft article 1(2) emphasising the subsidiary nature of the draft articles. In this regard, my delegation takes note of the decision of the Drafting Committee to provisionally adopt Articles 10 and 10bis of the draft articles, according to which in cases of uniting of States and incorporation of a State into another State, the injured State and the successor State shall agree on how to address the injury.

My delegation would also like to make a few comments regarding the draft articles adopted by the Commission at its 72nd Session. First, my delegation would like to express its gratitude to the Commission for drafting draft article 7 in a way that reflects the principles already stipulated in Articles 11 and 14(2) of the Draft Articles on the

Responsibility of States for Internationally Wrongful Acts, or ARSIWA.

Second, my delegation notes that the ILC describes article 9, paragraph 2 as referring to situations in which the successor State is “relevant for addressing the injury”, not those in which the successor State is “responsible” for the injury. My delegation requests the Commission to further elaborate on the “particular circumstances” in which the successor State becomes relevant for addressing the injury.

Lastly, regarding the draft articles 16, 17, and 18 proposed by the Special Rapporteur in his 4th Report, my delegation notes that these articles are drafted in a way that does not deviate from customary international law as codified by the aforementioned ARSIWA. It being the case, my delegation expresses doubt as to whether such draft articles specific to individual forms of reparation are necessary for discussion on this topic. My delegation believes that it would be more efficient for the Commission to focus on the relationship between different categories of state succession and reparations as a whole, taking full account of the relevant principles of international law and the importance of agreement between the parties.

Madam Chair,

Turning to the topic of “General Principles of Law”, my delegation welcomes the discussions of the Commission on this matter and would like to extend its heartfelt gratitude to Special Rapporteur Mr. Marcelo Vázquez-Bermúdez and all the ILC members for their invaluable contribution to making progress.

Regarding the provisionally adopted draft conclusions at the 72nd session, my delegation would like to make a few comments on the text of the draft conclusions, particularly in terms of the modifications to its text adopted at this year’s session of the Commission.

First, we appreciate the efforts of the ILC to replace the expression “civilized nations”, as stipulated in Article 38, paragraph 1 (c), of the Statute of the International Court of Justice, with “community of nations” as contained in the International Covenant on Civil and Political Rights. By employing this formulation, the draft conclusion stresses that all nations take part in the formation of general principles of law on an equal footing, in tandem with the principle of sovereign equality embodied in the Charter of the United Nations.

Second, my delegation takes note of the decision of the Commission to use the term “the various legal systems of the world” instead of “the principal legal systems of the world” in the draft conclusion 4. The latter reflects the variety and diversity of national legal systems of the world, highlighting that the principles must be derived from the world generally.

With respect to the two types of general principles of law addressed in the Special Rapporteur’s second report, namely the one derived from national legal systems and the other formed within the international legal system, my delegation is of the view that the meaning and contents of the latter are rather unclear and would like to suggest that the Commission further examine and study that issue more in depth.

The Korean government again expresses its deep appreciation to the Special rapporteur and the Commission and hopes for continuous progress on this matter.