77th Session of the General Assembly
Sixth Committee

Report of the International Law Commission on the work of its seventy-T6 M4.47 Tgi4Qtu1(6[ide

Madam/Mr. Chair,

The Czech delegation welcomes the progress of the work on the topic
and appreciates the contribution of the Special Rapporteur, Mr. Pavel Ġturma, to the over-all achievement.

We note the Commissionôs decision to modify the form of the draft provisions from that of ñdraft articlesò to that of ñdraft guidelinesò. Because the revision of provisions adopted during previous sessions did not affect their content[1], we refer to our comments made on these provisions in the past. Today we will focus on draft guidelines with commentaries adopted by the Commission at its recent session.

Guideline 6 entitled ñNo effect upon attributionò, 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 predecessorôs internationally wrongful act, as it is further clarified in subsequent provisions.

Guideline 7bis 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 ñcomposite actò *sui generis*. The Commission, however, seems not to find any solution to this problem. As admitted in the commentary, ñthe inconsistency of the available State practice did not allow a firm conclusion to be drawn as to the content of the lawò and paragraph 3 is, therefore, formulated as a ñwithout prejudiceò clause. Guideline 7bis thus provides only very limited guidance for the solution of the relevant problem which the Commission was able to identify under the theme of ñcomposite actsò and which could arise in the context of succession of States. We therefore doubt whether this guideline is really needed, in its current form.

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

[1] D

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, ñthe provision should not be viewed as an expression of the ólean slateô principle [é], as that would risk leaving the injured State without a remedy.ò 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.

Paragraph 2 of guideline 10bis deals with an aspect which is fully covered by 2001 ARSIWA and, should this question, for sake of clarity, be mentioned at all, the commentary would be sufficient place for doing so.

Guidelines 12, 13, 13bis and 14 deal with situations when prior to the date of succession of States the predecessor State was a victim of an internationally wrongful act the consequences of which have not yet been wiped out.

Guideline 12 deals with those cases where the injured predecessor State continues to ex Tf1tw6st.

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.

Conversely, guideline 15bis concerning cessation and guaranties of non-repetition is rather superfluous. Its inclusion, it is our concern, could only undermine the authority

For the sake of clarity, we wish to underline, that many general principles of law which are common to national legal orders are now inherent also to international legal system. It is due to the fact that they are intrinsic to every legal system, whether national or international.

Despite significant increase of the volume of the international law, since times when famous formula of article 38, paragraph 1 (c) of the ICJ Statute was drafted, the national legal orders remain the most reliable basis for the identification of general principles of law. The determination of the existence of a principle common to the various legal systems of the world is addressed in conclusion 5. According to paragraphs 1 to 3, such determination requires ña comparative analysis of national legal systems [which] must be wide and representative, include different regions of the world [as well as] an assessment of national laws and decisions of national courts, and other relevant materials.ò This threshold seems to be too high. We are unaware of any practice which would justify similar requirements. The analogy which is made here with the identification of the rules of customary international law is inappropriate. Most of the general principles of law are legal postulates of notorious knowledge