



GOVERNMENT OF JAMAICA

INTERVENTION BY

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**ON THE REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC) TO
THE UNITED NATIONS GENERAL ASSEMBLY**

**CHAPTER VII: SUCCESSION OF STATES IN RESPECT OF STATE
RESPONSIBILITY JAMAICA'S STATEMENT**

6th November 2019

Mr. Chairman,

My delegation wishes to commend the International Law Commission and the Special Rapporteur on their continuing contribution to the codification and progressive development of international law specifically in relation to the topic, *Succession of States In Respect of State Responsibility*.

Mr. Chair,

It is worth noting that *Article 5 of the 1978 Vienna Convention on Succession of States in respect of Treaties* had limited questions relating to the effects of a succession of States to matters provided for in that Convention, while *Article 39 of the 1983 Vienna Convention on Succession of States in respect of State Property Archives and Debts* expressly excluded issues *regarding the effects of a succession of States in respect of a treaty from the international responsibility of a State or from the outbreak of hostilities between States*. Further, the *2001 Draft Articles on the Responsibility of States for Internationally Wrongful Acts* addressed the subject in respect of matters relating to insurrectional movement, which later resulted in the creation of a new state, wrongful acts which comprised a continued character evident before and after the date of the succession, and acts permitting the exercise of diplomatic protection committed against the predecessor State.

Needless to say, the aforementioned work of the ILC and the decision taken to substantively address the matter at a future date, reflects the common view that the area of law being contemplated is a very complex and sensitive one. It therefore requires careful attention particularly in light of the fact that the current practice is limited, diverse and case-specific.

It is in light of these, my delegation shares the views of other Member states that the work being undertaken in relation to this topic must be consistent with its prior works. This is particularly vital as it pertains to the solutions of the substantive issues to be addressed and the usage of applicable terminologies for example, terms such as “injury” and “injured state”, which the Special Rapporteur indicated was intended to be consistent with Parts Two and Three of the 2001 Draft Articles. It was also indicated by the Special

Rapporteur that the notion of “responsibility of States” reflected a similar usage to that of the 2001 Draft Articles, wherein, Article 1 of the relevant articles, had clarified that “international responsibility” in article 1 covered the relations which arose under international law from the internationally wrongful act of a State, whether such relations were limited to *inter alia* the wrongdoing State.–In light thereof, it is understood that references to the term, “responsible state” means “the state which caused, or is believed to have caused, the injury” as articulated in the 2001 Draft Articles.

It is also suggested that there should not be any automatic extinction of responsibility or automatic transfer of responsibility in cases of succession of States, which is also referred to as the general rule of non-succession. The rationale for this is that this principle has the potential to lead to unfair and inequitable results as in the former case, states would avoid consequences of internationally wrongful acts and in the latter case, nationals or states which have legitimately suffered an injury would be left without a legal remedy/reparation. My delegation suggests that the determination as to whether there would be a succession to responsibility should turn on the facts of the case as indicated in the case of *Lighthouses Arbitration between France and Greece*,¹ which further held that the responsibility of a State might be transferred to a successor if the facts were such as to make it appropriate to hold the latter responsible for the former’s wrongdoing.

We also believe our stance is supported by the dissenting opinion of Judge Van Eysinga who reasoned in the *Panevezys Saldutiskis Railway Case* that the crystallization of such unwritten rules of law that is, the non-succession or clean-slate principle, in which a territory would not be able to bring a claim on behalf of a national which had suffered an injury, against a successor state, would lead to inequitable results.

In conclusion, Mr. Chairman, my delegation awaits the fourth report of the Special Rapporteur and looks forward to the continued development of this area of law.

¹ *Claims No. 11 and 4*, 24 July 1956 (United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XII, p. 155)