



PERMANENT MISSION  
OF ESTONIA TO THE UN

## Statement of the Republic of Estonia

### 73rd Session of the United Nations General Assembly Sixth Committee

#### Report of the International Law Commission Cluster I

Mr Chairman,

Allow me to first thank the Chairman of the International Law Commission and the Commission for the presentation of this year's report and to express Estonia's appreciation for the valuable work accomplished by the Commission.

Mr Chairman,

Estonia welcomes the adoption of a set of 13 draft conclusions on the topic of **subsequent agreements and subsequent practice in relation to the interpretation of treaties** and the commentaries thereto. We would like to thank the Special Rapporteur Mr Georg Nolte for the valuable effort on this important topic.

Although a final product of the work, Estonia would like to comment on some of the aspects of the outcome. We fully agree with the Commission that the dividing line between the interpretation and the amendment or modification of a treaty is in practice "difficult, if not impossible to fix". Keeping that in mind, the further development of the commentaries to the draft conclusions would have been useful to bring more clarity into the legal consequences that may derive from the lack of clear distinction between the two.

Several cases listed in the commentaries as examples of either amending a treaty or specifying (i.e. widening or narrowing) its interpretation could easily be claimed to be the opposite case as well. We therefore always need to keep in mind the principle of *pacta sunt servanda* and the stability of treaty relations in general as subsequent practice may stray further and further away from the original wording or interpretation of a treaty.

Finally, we understand that the subsequent practice in relation to treaties between States and international organizations or between international organizations is specifically not dealt with in the commentaries. However, as treaties between States and international organizations (especially regional organizations) are more and more common, we would have hoped to see an analysis of such practice as it might give rise to interpretations by members of these international organizations in their similar practice too.

Estonia once again expresses its gratitude for the extensive work done on the topic and supports the wide dissemination of the conclusions and commentaries thereto.

Mr Chairman,

We would like to thank and congratulate Special Rapporteur Sir Michael Wood and the Commission for the work done on developing the draft conclusions and commentaries **on identification of customary international law**. It is evident that this contribution is very valuable and helpful for the international community to identify the existence and scope of customary international law.

Estonia is of the view that as the draft conclusions should apply to the vast range of possible situations, the balance between precision and flexibility has been drawn well. At the same time, we concur with the Special Rapporteur's recognition, that greater precision with respect to the relevance of practice on international organizations was needed and commends the Special Rapporteur for the suggestions made to this effect.

With regard to draft Conclusion 4 paragraph 2, Estonia concurs with the commentaries that international organizations are entities established and empowered by States to carry out certain functions and therefore often serve as

arenas, or catalysts, for State practice. We are of the opinion that the practice of international organizations does contribute to the formation of rules of customary international law and reflecting this in the conclusions in the suggested way is relevant. As the Special Rapporteur rightly put it, excluding such practice would preclude the member States themselves who have directed an international organization to execute in their place actions falling within their own competences from contributing to the creation or expression of customary international law.

With regard to draft Conclusion 6 paragraph 1, Estonia commends the wording of the notion that inaction may, under certain circumstances, be a form of State practice. The commentaries make it clear that it cannot be simply assumed and only deliberate inaction in specific circumstances may be taken into account. Deliberate inaction, as suggested by the Special Rapporteur, would have been a very precise suggestion also for the draft conclusions, but as is noted well, the draft conclusions and the commentaries thereto should be read closely together.

With regard to draft Conclusion 13, we note that it follows closely the wording of Article 38 paragraph 1 (d) of the Statute of the International Court of Justice. Estonia agrees with the commentaries that caution is called for when seeking to rely on decisions of national courts as a subsidiary means for the determination of rules of customary international law. National courts may lack international law expertise and may have reached their decisions without receiving arguments from States, thus the judgments of international courts and tribunals should be accorded greater weight.

Estonia expresses once again its appreciation for the work done on this important topic and supports wide dissemination of the draft conclusions with the commentaries thereto.

Mr Chairman,

Estonia congratulates the Commission for its **seventieth anniversary**. We took note with great acknowledgement that the Commission celebrated the anniversary with events organized both in New York and in Geneva. The overarching theme “70 years of the International Law Commission — Drawing a balance for the future”, captured among others such important panel discussions as interaction between the

Commission and the Sixth Committee; Commission's impact and working methods and the changing landscape of international law.

Estonia appreciates that the details of proceedings of the seventieth anniversary commemorative events will be made available in a publication.

Mr Chairman,

On the **recommendations for the long-term programme of the work of the Commission**, Estonia notes with appreciation that the Commission decided to include the topic "General principles of law" in its programme of work and to appoint Mr. Marcelo Vázquez-Bermúdez as Special Rapporteur.

At the present session, the Commission decided to recommend the inclusion of universal criminal jurisdiction and sea-level rise in relation to international law in the long-term programme of work. Estonia is noting the huge workload of the Commission and vast number of topics under consideration. At the same time, we understand the pressing concerns for the inclusion of sea-level rise in relation to international law in the programme and inclusion of universal criminal jurisdiction, which serves well the criteria for the selection of the topics.

Thank you for your attention.