



PERMANENT MISSION  
OF ESTONIA TO THE UN

## **Statement of the Republic of Estonia**

### **74th Session of the United Nations General Assembly Sixth Committee**

#### **Report of the International Law Commission Cluster III**

Mr/Mrs Chairperson,

Today I will address two topics: 1) succession of States in respect of State responsibility and 2) general principles of law.

Mr/Mrs Chairperson,

On the topic of **succession of States in respect of State responsibility**, we would like to thank Special Rapporteur Mr. Pavel Šturma and the Drafting Committee for their work at this session.

Especially we would like to thank Special Rapporteur for his comprehensive analysis of different aspects of the topics on the agenda and for his endeavour to bring up different practical cases from different regions of the world. We appreciate also very much Special Rapporteur's work on highlighting and explaining in the report different approaches to certain issues, in particular we like to mention problems arising with regards to cases of diplomatic protection in the situation of succession of States.

We agree with the language of the draft articles proposed in 3<sup>rd</sup> report at this stage and welcome the wording for the scope of the parts II and III.

With regard to the Chapter IV of the report - reparation for injury arising from internationally wrongful acts committed against the nationals of the predecessor State, we would like to comment the following. In our opinion, in cases of State succession the modern approach should be followed. We appreciate that the report points out the case law and State practise, which supports this approach. Problems arising from the application of traditional approach (continuous nationality) are well described in the report of the Special Rapporteur, especially also with regard to the decision of the Permanent Court of International Justice in 1939 in the *Panevezys-Saldutiskis Railway-case (Estonia v Lithuania)*. In addition, other examples of State practise described in the report illustrate well that a rigid application of the principle of continuous nationality in cases of State succession could create unequitable results. It could result in unfair treatment of private persons in getting reparation for the injuries and it could result in a situation in which none of the States is entitled to seek redress for their nationals in cases of State succession. In this context we also welcome the work of the International Law Institute on this subject and the adoption of the final resolution at the Session in Tallinn 2015 on the topic “State Succession in Matters of State Responsibility“, in which the modern approach was supported. We consider that the rules of international law should not and can not be directed to the exclusion of some persons from the reparations for injuries. However, we fully agree that in cases of diplomatic protection the continued nationality is the general rule, as formulated in Paragraph 1 of Article 1 of the draft articles on diplomatic protection and forum shopping shall be avoided. Still, in the case of States succession we should follow the modern approach on the abovementioned reasons.

We note the proposal by the Special Rapporteur on the subjects for subsequent reports and upcoming deliberations of the Commission. We consider the way forward proposed by the Special Rapporteur to be reasonable and we wish the Special Rapporteur and the members of the Commission all the success.

Mr/Mrs Chairperson,

Concerning the topic of **general principles of law**, Estonia would like to welcome the decision made by the International Law Commission in 2018 to include the topic in its programme and the work done by Special Rapporteur Mr Marcelo Vazquez-

Bermudez. Analysing general principles of law as a source of international law will supplement the work of the ILC on studying other sources of international law.

Estonia believes that the approach by the Special Rapporteur in regard to addressing the issue in the ILC report is accurate and comprehensive. The general nature of the initial analysis allows to give an overview of the main issues and will accommodate further discussions among states.

Estonia supports the suggestion made under paragraph 228 that the scope should focus on the Article 38, paragraph 1(c) but should not be limited only to its application by the court but also on practice of States and of international courts and tribunals. In addition, based on further work, it might be necessary to indicate to limitation in the title of the topic.

Regarding possible illustrative list of general principles of international law, Estonia, not excluding a possibility to add a list, finds that further work should be done on case law and state practice on the matter prior adding such a list to the report. Adding such an illustrative and non-exhaustive list in the further stage of the analysis would give a greater context in relation to the legal substance of the report.

Estonia would also like to emphasize the importance that the distinction of general principles of law and customary international law should be more thoroughly examined. In addition to proposed aspects in paragraph 233 of the topic, Estonia suggests not only to bring forward the distinctions but also the commonalities of the two topics. In paragraph 239 of the part c, it was suggested to further examine the distinction between principles, norms and rules. Estonia would like to encourage to study this area further as this distinction between these three terms have been under question in other areas of international law where the understanding of how international law applies, is still emerging (e.g international law applicable to state conduct in cyberspace).

In general, Estonia supports the views expressed in part b. However, as it states in paragraph 238, some members questioned the usefulness of reviewing references to general principles of law in specific treaty regimes. Estonia would like to support the notion, that to the contrary, such an approach would be beneficial to the further

understanding of the concept. As it has been in other sources of international law, these are not universal but vary from treaty regime to treaty regime. In addition, Estonia supports adding the analysis of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

In general, Estonia would like to see issues addressed which touch upon those mentioned in the end of the paragraph 242 surrounding the level of recognition. This has been one of the key issues in many other topics included in the ILC report, customary international law and *jus cogens* norms for example, and is very much relevant for the general principles of law as well.

Estonia also supports the approach of the Special Rapporteur on the matter of the origin of the general principles of law – based on national legal systems and general principles of law formed within the international legal system. However, we should not create too layered and categorized approach in the early stage of the work. In addition, a view was expressed that caution should be taken when considering the category of general principles of law formed in international legal system due to the lack of state practice. Estonia finds that in general, the approach suggested seems sufficient, however it can be modified in due course if deemed necessary. In this light, Estonia also supports the future programme of work as brought forward in the part f.

In conclusion, Estonia would like to reiterate to the International Law Commission and to the Special Rapporteur our gratitude for this initial framework from which the work on the general principles of law could expand and develop.

Thank you for the attention.