



Statement of the Republic of Estonia
76th Session of the United Nations General Assembly
Sixth Committee
Report of the International Law Commission
Cluster II
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Madam Chair,

Today I will address two topics: immunity of State officials from foreign criminal jurisdiction and sea-level rise in relation to international law.

Madam Chair,

Estonia would like to make some comments on the **immunity of State officials from foreign criminal jurisdiction**, the topic that was included in the International Law Commission's (ILC) programme of work already in 2007. We would like to thank the Commission for their report and continuous attention to this important but complex topic.

We would like to commend the Special Rapporteur Ms Concepción Escobar Hernández, having assumed this role in 2012, for her dedicated work during all these years and for the presentation of her high quality reports. The Special Rapporteur has now completed her plan of work on the topic, including the additional questions, which were analysed in the 8th report. We would also like to thank Mr. Roman A. Kolodkin who was the first Special Rapporteur on this topic.

The Commission, after considering the reports of the Drafting Committee, has provisionally adopted draft articles 8ante to 12 accompanied with commentaries, the progress of which we highly value. We would like to thank the Drafting Committee and the Commission for the progress made.

The 8th report of the Special Rapporteur examined the relationship between the immunity of State officials from foreign criminal jurisdiction and international criminal tribunals; considered a mechanism for the settlement of disputes between the Forum State and the State of the official and the issue of good practices. The Special Rapporteur also submitted relevant draft articles 17 and 18, which have been referred to the Drafting Committee by the Commission. We commend the constructive approach of the Special Rapporteur for holding informal consultations to assist the Drafting Committee.

We would like to echo the view expressed by a number of members of the Commission that a dispute settlement clause would only be relevant if the draft articles were intended to become a treaty. As draft article 17 is also linked to other draft articles, in particular article 13 (consultation) and article 15 (exchange of information), their interaction with draft article 17 could also be examined. In addition, we have draft article 12 on notification and draft article 17 that makes a reference to negotiations, and as a means of settlement of disputes, the options of referral of a case to the International Court of Justice (ICJ) or to an arbitral body. As concerns draft article 17, it is obvious that any dispute that arises between two States in relation to the determination and application of immunity of a State official from foreign criminal jurisdiction can be settled through traditional means of dispute settlement, as pointed out by the Special Rapporteur. We would like to recall that the aim of setting rules for settlement of disputes should be the provision of a simple, speedy and effective model for dispute settlement; here a comprehensive approach of different aspects of cooperation between States could be taken in order not to overcomplicate the whole process.

We would like to support sticking to the traditional means of dispute settlement and we do not see a need for the creation of a possible new separate body, the possibility of which was also analysed in the report of the Special Rapporteur, as this will add complexities to the already complex issue. As long as recognition of the jurisdiction of the ICJ is not universal, we should rather concentrate on the universal recognition of the ICJ's jurisdiction rather than creating new permanent bodies, the jurisdiction of which has to be universally accepted in order for it to function properly. We agree with the Special Rapporteur that it is preferable to wait until the text is finalized on first reading to take a decision on the matter.

Estonia is grateful to the Special Rapporteur and to the Commission that a relationship between the topic of immunity of foreign officials and international criminal tribunals has been examined. In this context, we would like to recall, in particular, the role and mandate of the International Criminal Court (ICC) to respond to atrocity crimes, fight impunity, and provide justice to victims. We appreciate the provision of the text of the draft article 18 by the Special Rapporteur, suggesting a prejudice clause, which we take note of with interest. This provision deserves further attention, in particular, regarding whether to be included in the draft articles as a separate draft article or its text or principles could be merged with other draft articles, which was also pointed out by the members of the Commission, suggesting its inclusion as article 1 paragraph 3. We agree with the approach that this draft article is interrelated with other draft articles and therefore merging it with previously provisionally adopted article 1 would also be our preference. We appreciate flexibility of the Special Rapporteur to continue discussion of the placement of the text of this draft article.

In the 8th report the Special Rapporteur did not consider it necessary to formulate specific proposals regarding the issue of “recommended good practices” although relevant analyses was provided in the report. We agree with this approach of the Special Rapporteur and the Commission. Although good practices are of great interest, currently it does not suffice to be included in the draft articles.

To conclude this part, we would like to reiterate some of the comments we have made in previous years, which we find are still relevant, as we have not been alone in raising the issue that the crime of aggression should be listed in draft article 7 paragraph 1 among the list of crimes in which immunity *ratione materiae* does not apply.

Estonia once again expresses its appreciation for the work done by the Special Rapporteur and the Commission on this topic.

Madam Chair,

Now turning to the topic of **sea-level rise in relation to international law**. Estonia aligns itself with the statement made by the European Union.

Estonia very much welcomes the work done on the topic of sea-level rise in relation to international law. We thank the Study Group for their work carried out

at eight meetings and for the first issues paper by Dr. Bogdan Aurescu and Dr. Nilüfer Oral. We are thankful that the work of the Study Group helps to clarify international law rules in this important field.

We are glad that the first issues paper is giving a very good overview of the problems arising from possible legal effects or implications of sea-level rise and a very clear summary at the end of every part of the paper. Estonia agrees with all main conclusions of the paper. We also welcome the idea that the Study Group, if needed, could consider inviting scientific and technical experts to future meetings of the Study Group.

Estonia is of the opinion that the fundamental pillar of ocean governance is the United Nations Convention on the Law of the Sea (UNCLOS), which establishes the overarching legal framework within which all activities in oceans and seas must be carried out. UNCLOS has to stay the framework also for this topic. In this sense, we welcome the conclusion in the first issues paper that the aim of the Study Group should be to find solutions to the challenges connected to sea level rise in the UNCLOS. The need to preserve legal stability, security, certainty and predictability in international relations has to be kept in mind. We are satisfied that the Study Group has found possibilities to interpret the UNCLOS in the way that it corresponds to the need for the stability in inter-state relations.

We support the idea to stop updating notifications, in accordance with the UNCLOS, regarding the baselines and outer limits of maritime zones measured from the baselines and, after the negative effects of sea-level rise occur, in order to preserve the States' entitlements.

We also note with interest that according to the issues paper the State practice already generally supports the preservation of existing maritime delimitations. Issues related to existing claims concerning the law of the sea delimiting future maritime areas would still need further consideration by the Study Group.

Estonia finds it interesting to note that according to the first issues paper regional or particular customary rules could have emerged in connection with the sea level rise and we noted that in order to draw definite conclusion on this, more submissions from States would be needed.

We also read with great interest the analyses of the Study Group on the principle of the *clausula rebus sic stantibus* in connection with the sea level rise. We agree that if this principle would apply in the case of sea level rise, it would bring the States to the need to negotiate the maritime boundaries again, which again would lead to changing rights and obligations in international relations and bring instability into the relations. Hence, we agree with the conclusion that the maritime delimitations must be stable and definitive to ensure a peaceful relationship between the States concerned in the long term.

Estonia agrees with the pertinent questions of Study Group on the influence of sea level rise on other international conventions and agreements, such as licenses for other economic activities in the exclusive economic zone, such as offshore windfarms or for fisheries access agreements in the exclusive economic zone.

Another important aspect is to use practice of different states and regions. In connection with this topic, the Study Group was firstly presented on the African States' practice regarding maritime delimitation. Therefore, we adjoin with the recommendation to extend the study of State practice and *opinion juris* to different regions.

Madam Chair,

Coming to the end of our comments, we would like to note that the topic sea-level rise identifies a number of issues of international law that need to be analysed. We see that the outcome of the work by the Commission will be of great influence to the international law, including law of the sea and keeping that in mind, we wish the Commission and the Study Group all the success in their endeavours.

Thank you for your attention.