



Statement of the Republic of Estonia
76th Session of the United Nations General Assembly
Sixth Committee
Report of the International Law Commission
Cluster III
3 November 2021

Mr Chair,

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

Mr Chair,

On the topic of **succession of States in respect of State responsibility**, we would like to thank the International Law Commission (ILC), Special Rapporteur Mr. Pavel Šturma and the Drafting Committee for their work during the past session.

We would especially like to thank the Special Rapporteur for his comprehensive analysis of different aspects of the topic on the agenda and for his endeavour to explain all aspects, including practical cases related to the impact of succession of States on forms of responsibility. We appreciate also very much the Special Rapporteur's work on explaining in the report the issue of composite acts, assurances and guarantees of non-repetition in the situation of succession of States.

We would like to express our support to the way the Special Rapporteur has approached the topics in the 4th report. We appreciate that the Special Rapporteur has taken into account the draft articles on responsibility of States for internationally wrongful acts and in that way guarantees the consistency of the ILC's work throughout the topics. Furthermore, we welcome that his analysis is based on the reflection that the consequences of State responsibility are twofold - reparation in narrow sense (with its three forms of reparation) and obligation of cessation and non-repetition. Estonia supports the inclusion of articles that support reparations for the injured States and mention the guarantees of non-repetition.

Furthermore, we find it important, as mentioned in paragraph 31 of his report that even if the full reparation remains the general rule of customary law the States concerned may arrive at an agreement that provides less than full reparation.

We also find it essential that a State has the right to decide whether to waive its claims of reparation or present them for a certain amount in certain point in time. However, in our opinion, the waiver of the claim does not mean that the internationally wrongful act has not taken place. We are also of the opinion that the injured State has the right to decide when and how to present the claim. Not presenting the claim directly after internationally wrongful act does not, in our opinion, hinder the injured State to invoke the responsibility in reasonable time.

We took note of the proposal by the Special Rapporteur on the subject matter for the 5th report. 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 Chair,

Concerning the topic of **general principles of law**, Estonia thanks the Special Rapporteur Mr Marcelo Vazquez-Bermudez for the 2nd report, the Secretariat for preparing the memorandum and the Commission for the work done on this important but complex topic.

Estonia takes note with appreciation of the methodology and approach taken for identifying general principles of law derived from national legal systems. First, by determining the existence of a principle common to the various legal systems of the world; and second, the ascertainment of the transposition of that principle into the international legal system. Estonia commends the survey of relevant State practice, jurisprudence and teachings, but as was also expressed by some members of the Commission, Estonia would support to properly weigh the use of opinions of States on general principles of law expressed in the course of litigation.

Estonia also supports the notion that it should be further analysed if the rules of an international organisation might be taken into account when carrying out the comparative analysis, especially in a situation where the international organisation is given the power to issue rules that are binding on its Member States and directly applicable in the legal systems of the latter.

With respect to the identification of general principles of law formed within international legal system, Estonia takes note of the discussions at the Commission and is of the opinion that deeper analysis and further discussions would be needed in order to distinguish between the rules of conventional or customary law or *jus cogens* norms and the general principles of law, including their parallel existence. Estonia is of the view that doing so by the Commission would be an important contribution to international law.

Estonia calls for further clarification of the terms “principle” and “rule”, both separately and in relation to each other. This would be useful not only for the topic at hand but also in order to understand the relationship between the two in emerging fields – such as international law applicable to State use of ICTs.

In terms of terminology, clarification in the usage of terms such as “general international law”, “general principles of international law” and “fundamental principles of international law” would also be welcome. The introduction of a section in the draft conclusions for definition of terms used therein shall probably be addressed in future reports.

What concerns the resolutions of the United Nations’ General Assembly and its subsidiary bodies as potential forms of recognition of general principles of law or as subsidiary means for the determination of general principles of law, Estonia is of the view that it should not be underestimated and should also be analysed.

Estonia supports the future programme of work proposed by the Special Rapporteur to address the functions of general principles of law and their relationship with other sources of law in his 3rd report keeping an open mind of the possible need to address also other topics raised through questions posed or discussions held in the Commission and the 6th Committee.

Estonia once again extends its appreciation to the Special Rapporteur and the Commission for the work done and concurs with the notion that the complexities of the topic require careful and extensive treatment also in the future.

Thank you for the attention.