



PERMANENT MISSION  
OF ESTONIA TO THE UN

**Statement of the Republic of Estonia**  
**by Mr René Värk at the**  
**77th Session of the United Nations General Assembly Sixth Committee**  
**Report of the International Law Commission**  
**Cluster III - Chps: VII (Succession of States in respect of State responsibility) and VIII**  
**(General principles of law)**  
**2 November 2022**

Mr/Mrs Chair,

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

Mr/Mrs Chair,

On the topic of **succession of States in respect of State responsibility**, we would like to thank the International Law Commission, Special Rapporteur Mr. Pavel Šturma and the Drafting Committee for their work during the past session. We would especially like to commend the excellent work of the Special Rapporteur in bringing us a comprehensive overview of the topic while also pinpointing the elements of divergence and misunderstandings that would merit further discussions. We note that the Special Rapporteur has been very tentative in the Sixth Committee debates and has adjusted his recommendations accordingly including addressing some of our concerns.

We welcome the Commission's decision about the format of the outcome of the work on this topic. We think this is a reasonable way to proceed to have draft guidelines, rather than draft articles.

Regarding the substantive matters, we reiterate our appreciation for the inclusion of draft article 6 on effect upon attribution. We think that even if this provision expresses the basic principle, which is codified in articles on responsibility of States for internationally wrongful acts, it is good to have the clarification in this text as well. We agree as well that it is important, as stated in the commentary to the article, to clarify that the draft article applies only to the effects of a succession

of State occurring in conformity with international law. This is important for the sake of clarity and for the delimitation of the scope of draft articles. It is our understanding that the illegal acquisition of the territory (i.e. through illegal annexation) cannot generate the effects of succession between concerned States.

We also appreciate that the Special Rapporteur has taken into account previous work of the Commission so that the consistency of the ILC's work throughout the topics is guaranteed. With that said, we would like to reiterate our support to the way the Special Rapporteur has approached the topic of content and forms of reparation in its earlier reports. We welcome that the Special Rapporteur has used the draft articles on responsibility of States for internationally wrongful acts as bases and has focused on clarifying how these rules operate in the specific factual scenario of succession of States. We would therefore not be in favour of the option revealed in the debate in the plenary meetings of the Commission to reconsider the number and structure of the draft articles on the content and form of legal consequences arising from State responsibility in the context of succession of States proposed by the Special Rapporteur. Our preference here would be to follow the structure chosen in the articles of state responsibility for internationally wrongful acts for the sake of clarity and comparability.

Regarding the substance of these articles, as we have stated previously, we welcome to twofold approach and support the inclusion of articles on reparations for the injured States and on the guarantees of non-repetition. Furthermore, we find it important, as has been mentioned by the Special Rapporteur in his fourth 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.

Estonia extends once again its appreciation to the Special Rapporteur Pavel Šturma and the Commission for the work done on the topic of succession of States in respect of State responsibility.

Mr/Mrs Chair,

I now turn to the topic of **general principles of law**. Estonia would like to thank the Special Rapporteur Mr Marcelo Vazquez-Bermudez, the Drafting Committee and the Commission for the outstanding contribution and work done on general principles of law.

Estonia takes note with appreciation of the progress made in the consideration of the issue of transposition, which forms an important part of the work carried out.

Estonia views that clarity in the methodology for the identification of general principles of law is crucial for the proper application of general principles of law and the performance of their functions.

Keeping that in mind, Estonia commends the notion that, while maintaining objective criteria for the identification of general principles, a balance of rigor and flexibility regarding transposition could be achieved, so as not to hinder the performance of the functions of the general principles by being overly prescriptive. Thus, Estonia supports the simplification of the draft conclusion 6 on the determination of transposition of general principles of law derived from national legal systems to the international legal system. This provided that guidance on the requirements of transposition, such as the proposition that transposition was implicit and did not require an express or formal act, be addressed in the commentaries to the draft conclusion.

Estonia very much welcomes the further clarification of the relationship between general principles of law and other sources of law, including the possibility of their parallel existence. As we have pointed out in our previous statements, by doing so the Commission is making an important contribution to international law. However, as also expressed in the discussions at the Commission, we would have hoped for deeper analysis of the relationship between general principles of law and peremptory norms of general international law.

With respect to the question of absence of hierarchy between the sources of international law, Estonia commends the notion in the ILC report that there was certain tension between the draft conclusion on the absence of hierarchy and the draft conclusion on gap-filling, as through the gap-filling function general principles of law are somewhat placed below treaties and customary international law. Although, there was consensus reached in the Commission on general principles of law fulfilling the same functions of the other sources of international law, and not being necessarily limited to gap-filling, this tension seems to remain unsettled even with the new proposed draft conclusion 10 on the functions of general principles of law.

As for the distinction between the essential function of general principles of law and certain specific functions, Estonia supports the suggestion of merging draft conclusions 13 and 14 and avoiding such a clear distinction. As general principles of law also perform a major function in providing coherence to the international legal system, such partition seems to diminish this role unnecessarily.

Estonia supports the future programme of work proposed by the Special Rapporteur to address in the fourth report the changes that might be made to the draft conclusions and the commentaries in light of the discussion in the Sixth Committee and of any written observations received from States and others, with the aim to conclude work on the topic, if possible, at the Commission's 2024 session.

Estonia notes the complexities of the topic and once again expresses its appreciation to the Special Rapporteur, the Drafting Committee and the Commission for the impressive work done.

Thank you for your attention.