



PERMANENT MISSION
OF ESTONIA TO THE UN

Statement of the Republic of Estonia
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Committee
Report of the International Law Commission
Cluster I
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Mr/Mrs Chairperson,

Estonia welcomes the new quinquennium of the International Law Commission and would like to express its appreciation for the work done during its Seventy-fourth session.

Mr/Mrs Chairperson,

Regarding the **specific issues on which comments would be of particular interest to the Commission**, Estonia reiterates its readiness to send its comments and observations to the draft articles on the topic “Immunity of State officials from foreign criminal jurisdiction” to the Secretary-General by 1 December 2023.

Mr/Mrs Chairperson,

Let me now turn to the topic of **general principles of law**. Estonia shares the understanding that it is necessary to explain the nature, role and identification of general principles of law in the international legal system. We would like to thank Special Rapporteur Marcelo Vazquez-Bermudez, the Drafting Committee and the International Law Commission for their work done on this important topic.

Estonia welcomes that the draft conclusions have departed from the term “civilized nations” found in the Statute of the International Court of Justice, and have instead adopted the term “community of nations” (conclusions 2 and 7). We agree that the draft conclusions should not use the term “international community of States as a whole” found in the Vienna Convention on the Law of Treaties, in the context of jus cogens norms, because it sets unnecessarily high threshold. We hold that the essence of general principle of law should not change despite the modernisation of terminology. Although we need to assess foremost the positions of states when determining whether a general principle of law has been identified and recognised, we cannot rule out that international organisations may also provide useful contributions.

The draft articles foresee that the general principles of law derived from national legal systems must be “common to the various legal systems of the world” (conclusions 4 and 5). In our view, the word “various” in this context does not represent the best way what is required. It is not the mere number of national legal systems that matters, but whether these national legal systems are both numerous and representative. We invite the Commission to revisit the phrase or provide further clarifications in the commentary.

Mr/Mrs Chairperson,

The draft conclusions establish conditions how to determine the existence and content of a general principle of law. As a rule, the community of nations must recognise the principle as “intrinsic to the international legal system” (paragraph 1 of Conclusion 7). This requirement ensures that the principle meets the criteria set for general principles of law as a source of international law, and the principle has passed the scrutiny by the community of nations. However, as an exception, the draft conclusions provide that there can exist “other general principles of law formed within the international legal system” (paragraph 2 of Conclusion 7). It is not clear, how do we identify such principles. Estonia suggests that the Commission explains in more detail the nature and the need for the other type of general principles of law with relevant examples and supportive jurisprudence.

The draft conclusions explain well the relationship between general principles of law, and treaties and customary international law (conclusion 11). We agree that general principles of law are not necessarily in a hierarchical relationship with treaties and customary international law, and the principles may exist in parallel with the same and similar rules in other sources. Nevertheless, Estonia invites the Commission to conduct more explicit and deeper examination of the relationship between general principles of law and peremptory norms of general international law. More detailed commentaries on this matter would be appreciated.

Although Estonia does not see a hierarchical relationship between general principles of law, treaties and customary international law, we are supportive of the conclusion that general principles of law are mainly resorted to when other rules of international law do not resolve a particular issue in whole or in part (conclusion 10).

In conclusion, Estonia extends once again its appreciation to Special Rapporteur Marcelo Vazquez-Bermudez, the Drafting Committee and the Commission for the work done on this essential topic in order to further our understanding of general principles of law.

Mr/Mrs Chairperson,

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 welcomes the valuable work done by the Study Group, 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 appreciate that the issues papers are giving a very good overview of the problems arising from possible legal effects or implications of sea-level rise. Estonia is satisfied that all main items are covered in the papers. We note that the issues of legal stability in connection with delimitation agreements, especially the context of analysis of the principle of the fundamental change of circumstances (*rebus sic stantibus*) and principle that “the land dominates the sea” are challenging.

As the fundamental pillar of ocean governance is the United Nations Convention on the Law of the Sea, which establishes the overarching legal framework within which all activities in oceans and seas must be carried out; UNCLOS has to remain as the framework for this topic as well.

We welcome the conclusion of the Study Group that the principle of *uti possidetis* has limited application in relation to maritime boundaries and that the principle of stability of and respect for existing boundaries, their immutability, is a rule of customary international law. The same principle of stability of and respect for existing boundaries would apply to maritime boundaries, which share the same function of demarcating the extent of the sovereignty and the sovereign rights of a State. The need to preserve legal stability and preventing conflict in international relations has to be kept in mind.

Mr/Mrs Chairperson,

The fundamental change of circumstances (*rebus sic stantibus*) is a general rule of international law that has been codified in article 62 of the Vienna Convention on the Law of Treaties. 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. The fundamental interest of ensuring stability of boundaries with a view to preserving peaceful relations was one object and purpose of article 62, paragraph 2, of the Vienna Convention on the Law of Treaties. We share the opinion that the same interest would apply to ensuring the stability of maritime boundaries and preserving peaceful relations among States. There are still many disputed maritime boundaries, and the prospect of adding new ones from boundaries that were settled

would seem to undermine the interest of ensuring stability under the Convention. The State practice already generally supports the preservation of existing maritime delimitations. Preserving the stability of boundaries and peaceful relations under article 62 would equally apply to maritime boundaries, as underlined by the International Court of Justice and arbitral tribunals in cases addressing this issue.

The real challenge for future will be the case, when State territory is completely covered by the sea or becomes uninhabitable. In that situation, we need to read the UNCLOS and relevant conventions in a new light and interpret the international customary law with an open mind. We will look with deep interest to the future discussions about such kind of cases.

Mr/Mrs Chairperson,

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.

Mr/Mrs Chairperson,

Finally, on **other decisions and conclusions**, Estonia expresses its appreciation to the Secretariat for the website on the work of the Commission and finds it utterly important for the website to be kept updated, user-friendly and informative. Estonia is also looking forward to the future work on the topic “Non-legally binding international agreements” included in Commission’s programme of work and to the commemoration of the seventy-fifth anniversary of the ILC in Geneva next year.

Thank you for your attention.