

Statement on behalf of Latvia, Estonia, and Lithuania

by

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at the Sixth Committee on Agenda item 82 "Report of the International Law Commission of its seventy-second session"

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Cluster I -- Chapters: I, II, III, IV (Protection of the Atmosphere), V (Provisional Application of Treaties) and X (Other Decisions)

Madam Chair,

I have the honour to speak on behalf of the three Baltic states – Latvia, Estonia, and Lithuania.

We align with the statement made by the European Union.

We would like to thank Mr. Mahmoud D Hmoud, the Chair of the International Law Commission, for his presentation of the Commission's report and recent leadership of the ILC, and all the members of the Commission for the stellar quality of its outputs this year. We also express our appreciation to the bureau of the Commission and the Secretariat for the organizational arrangements put in place that allowed the Commission to be convened at its seventy-second session in hybrid format, as well as to everybody involved in the extraordinary efforts to ensure the smooth conduct of the Commission's deliberation. A special word of thanks is due to Ms. Patrícia Galvão Teles, the Chairperson of the Drafting Committee, who guided the important work of that committee throughout the session, a particular challenge given the hybrid format.

As the Baltic states stated at the Sixth Committee on Agenda item 85 "The Rule of Law at the national and international levels" earlier this month, we welcome the role of the United Nations in promoting the codification and progressive development of international law, notably through the International Law Commission, and are willing to take an active part in this process. The more states engage with the Commission's work and outputs in a serious and robust manner, the more likely it is to fulfil the potential of codifying and progressively developing universal rules suitable for the international legal order, very pluralist in many ways, in particular regionally and linguistically.

Protection of the atmosphere

Madam Chair,

I will begin the substantive statement by addressing the ILC's draft guidelines on the protection of the atmosphere, adopted on second reading this year.

Latvia, Estonia, and Lithuania express warm congratulations to the Special Rapporteur, Mr. Shinya Murase, for the outstanding contribution he has made and for the results achieved in the elaboration of the draft guidelines.

We appreciate that the draft guidelines acknowledge that the atmosphere is of essential importance for sustaining life on Earth, human health and welfare, and aquatic and terrestrial ecosystems. The atmosphere is the Earth's largest single natural resource and one of its most important. The goal of international law is to ensure that the planet remains habitable, which requires taking into account the interests of future generations, including with a view to human rights protection, as well as intergenerational equity.

We welcome the serious engagement by the Commission with the comments and observations submitted to it directly by states and received from international organizations, as well as the statements made in the Sixth Committee. The draft guidelines, just as the Commission's outputs more generally, have to be read together with the commentaries thereto, and we note the thoroughness with which they analyse state practice and judicial decisions as well as scholarship. We have also noted the discussion in the Drafting Committee regarding the 2013 understanding of the Commission, summarised in pages 8-9 of the statement of the Chairperson of the Drafting Committee Galvão Teles. While there is ground for reasonable disagreement on the point, we approve the approach eventually adopted in the eighth preambular paragraph and paragraph 2 of draft guideline 2. Taken together, these provisions provide a blueprint for the Sixth Committee and the ILC in articulating the interaction between the future work of the Commission and other developments in the international legal order.

Provisional application of treaties

Madam Chair,

I will now address the ILC's Guide to Provisional Application of Treaties, adopted on second reading this year.

Latvia, Estonia, and Lithuania express warm congratulations to the Special Rapporteur, Mr. Juan Manuel Gómez Robledo, for the outstanding contribution he has made to the elaboration of the Guide. Provisional application is an important element of the law of treaties, and the Commission is to be commended for providing guidance regarding the law and practice on the basis of the rather concise Article 25 of the Vienna Convention on the Law of Treaties. As the Commission explains in the General Commentary, provisional application is characterised by the capacity to adapt to varying circumstances to give immediate effect to a treaty -- but without either substituting the entry into force of treaties or bypassing domestic procedures. The Guide is likely to be of considerable assistance to practitioners, both its draft guidelines on provisional application of treaties and the annexed examples of provisions on provisional application of treaties. Indeed, even further examples of provisions, including on declarations and resolutions foreseeing the provisional application, would have been welcome.

The Guide and commentaries thereto, which have to be read together, answer a number of important questions regarding provisional application. In draft guideline 6, the Commission confirms that '[t]he provisional application of a treaty or a part of a treaty produces a legally binding obligation to apply the treaty' -- except to the extent that that treaty otherwise provides

or it is otherwise agreed – and that ‘[s]uch treaty or part of a treaty that is being applied provisionally must be performed in good faith’. We agree. Importantly, the Guide does not purport to be comprehensive, as suggested by the without-prejudice draft guideline 7 regarding reservations, and has to be read and applied alongside the broader corpus of residual rules of the law of treaties. Nor is it inflexible. As Estonia pointed out in its written comments and the Guide accepts in the General Commentary, provisional application is essentially voluntary and optional, and States and international organizations may agree on more appropriate solutions not identified in the Guide. We would, however, have appreciated further clarification in the commentaries to draft guideline 4(b) with respect to the stated requirement for express acceptance and on the inapplicability of the legal regime of unilateral declarations regarding provisional application through a declaration, a point repeatedly made in the statements of the European Union. We welcome the Commission’s recommendation at paragraph 43 of the report, including the preparation of a volume in the United Nations Legislative Series. Finally, we note with appreciation the reliance by the ILC on the practice of the European Union and its Member states in the preparation of the Guide.

Other decisions

Madam Chair,

I will conclude by addressing the rubric of ‘other decisions’.

We have taken note of the reports of the Working Group on the long-term programme of work over the last few years. It is likely that next year the Commission will have to decide on at least one new topic; an important choice that has to be taken seriously.

Latvia, Estonia, and Lithuania welcome the Commission’s decision to include in its long-term program also the topic subsidiary means for the determination of rules of international law. This topic meets the criteria for the selection of topics, and is likely to be of particular importance for practitioners in and before domestic courts and specialised and regional international tribunals and review bodies.

I thank you.