



Statement of the Republic of Estonia
77th Session of the United Nations General Assembly Sixth
Committee

Report of the International Law Commission

Cluster II - Chps: VI (Immunity of State officials from foreign criminal jurisdiction)
and IX (Sea-level rise in relation to international law)

28 October 2022

Mr/Mrs Chairperson,

Today I start with addressing the topic of **immunity of State officials from foreign criminal jurisdiction**. Estonia would like to thank Special Rapporteur Ms Concepción Escobar Hernández and the Commission for their continuous attention to this important and complex topic. We congratulate the Commission for good progress made this year and for the adoption of the draft articles on the first reading as well as adoption of the commentaries thereto. We also thank the Drafting Committee for their reports to the Commission on remaining draft articles that were referred to the Committee by the Commission.

We take note, that the Commission has decided to transmit the draft articles, through the Secretary-General, to Governments for comments and observations, to be submitted by 1 December 2023.

We also take note of the fact that the Commission has not yet taken a position whether to recommend that the draft articles be used as a basis for negotiations of a legally binding treaty.

Today we would like to make some comments on a limited range of issues that the Drafting Committee paid attention to this year.

We welcome that draft articles contain a provision on a relationship between the topic of immunity of State officials from foreign criminal jurisdiction and international criminal courts and tribunals. We are satisfied that this provision was included as paragraph 3 of article 1 to the scope of the draft articles, which was also our preference expressed in the previous round of comments last year. We

agree with the Commission that it is important to reflect in the draft articles the developments in the field of international criminal law and the establishment of international criminal courts and tribunals. In this context, the establishment and activities of the first permanent international criminal court - the International Criminal Court - plays a particular role, but there are other international courts/tribunals and hybrid courts/tribunals, the establishment of which also plays a role in the development of international law. We recall that the discussions on the establishment of a special tribunal to address the crime of aggression committed in Ukraine are ongoing.

The Commission has adopted several draft articles devoted to facilitating communication between the forum State and State of the official: exchange of information; consultation; negotiation; settlement of disputes. First, there is a specific draft article 13 on requests for information between the forum State and the State of the official. Second, draft article 17 is on consultations on matters relating to the immunity of the official covered by draft articles. We are not opposed to draft article 17 but we have some hesitations whether we understand the pressing need for a specific draft article on consultation. Possibility for consultation between two states constitutes a normal way of diplomatic communication and should always be available.

Third, there is draft article 18 on settlement of disputes. Its paragraph 1 includes an obligation for the parties in the event of a dispute to seek a solution by negotiation or other peaceful means of their own choice. We maintain the view that a dispute settlement clause would only be relevant if the draft articles were intended to become a treaty. Peaceful settlement of disputes is an obligation of UN member States, parties to a dispute may choose suitable peaceful means, and its inclusion in an international treaty is appropriate. We also support paragraph 2 of the draft article containing a clause of submission of the dispute to the International Court of Justice if a mutually acceptable solution cannot be reached without providing a party to a dispute possibility to opt out from the ICJ's jurisdiction as provided in some international agreements.

To conclude with this topic, Estonia once again expresses its appreciation for the work done by the Special Rapporteur Ms Concepción Escobar Hernández, the Drafting Committee and the Commission on adopting on the first reading of the draft articles and comments on immunity of State officials from foreign criminal jurisdiction.

Mr/Mrs Chairperson,

I now turn to the topic of **sea-level rise in relation to international law**. Estonia welcomes the work done on the second issues paper. We thank the co-chairs Patrícia Galvão Teles and Juan José Ruda Santolaria and the Study Group for their valuable work on this topic. Their work helps to clarify the rules of international law in this important matter.

Estonia aligns itself with the statement made by the European Union.

Estonia is of the opinion that the fundamental pillar of ocean governance is the United Nations Convention on the Law of the Sea. The UNCLOS establishes the overarching legal framework within which all activities in oceans and seas must be carried out.

Turning now more specifically to the summary of the debate and second issues paper, we would like to commend the work done by the Study Group. The second issues paper gives a very good overview of several problems arising from possible legal effects or implications of sea-level rise. We welcome the presented future programme of work and proposed study questions.

Mr/Mrs Chairperson,

Concerning the issues on statehood impacted by the sea-level rise, Estonia would like to note, that our main goal should be the preservation of legal stability, security, certainty and predictability in international relations. We are satisfied that the Study Group tries to find possibilities to interpret the main principles of international law in the way that it corresponds to the need for stability in inter-state relations.

Talking about statehood, we have to admit, as also mentioned in the Chapter II of Part Two of the issues paper, that there is no generally accepted notion of “State”, instead usually the criteria for a statehood are listed: permanent population, defined territory, government and capacity to enter into relations with the other states or other subjects of international law. We also agree with the notion that on some occasions a State could not automatically disappear because it does not meet all mentioned criteria, especially through the loss of the territory. In case of my own state, the Republic of Estonia, this happened, when we lost the control over our territory because of an unlawful occupation and illegal annexation but the statehood and legal personality of our State continued.

Estonia thanks the Study Group for presenting different modalities for preservation of State’s legal personality and territory, when its territory is completely covered by the sea or becomes uninhabitable. We must acknowledge

that more than 70 States are or are likely to be directly affected by sea-level rise. This is almost one third of international community. Some low-lying coastal States and small island States have an average elevation of only a few meters or feet above sea level. For them, the sea-level rise is not only theoretical debate but also a very practical issue.

We look with deep interest to the future discussions about the possibility for a State to exist without territory as an international legal personality. We thank therefore for the valuable and thought-provoking scenarios of coexistence in changing world in Part Two of the issues paper.

Mr/Mrs Chairperson,

Turning now to the issues of protected persons, we read with great interest the overview of the Study Group about indigenous peoples right to self-determination, in terms of power to organize themselves and handle their own internal and local affairs, as described by respective UN and American Declarations. We agree that the protection of rights of indigenous peoples to enable them to express their will in relation to decisions that could affect their future and preserve their rights, including their right to maintain their identity, is an important issue that deserves further attention in the context of sea-level rise.

Also, we agree and strongly support the position of the Study Group that the legal definition of “refugee” as set out in 1951 Refugee Convention and its 1967 Protocol does not cover the persons affected by climate change, including sea-level rise, as stated also by the UNHCR.

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 deserve our continuous attention. We welcome the present mapping exercise of the applicable legal frameworks and states practice. As to the possible next steps by the Commission, further discussions and analyses are needed in light of international law, including law of the sea. Keeping that in mind, we wish the Commission and the Study Group all the success in their endeavours.

Thank you for your attention.