



PERMANENT MISSION
OF ESTONIA TO THE UN

Statement of the Republic of Estonia

72nd Session of the United Nations General Assembly Sixth Committee

Report of the International Law Commission Cluster 1

Mr Chairman,

Allow me first of all thank the Chairman of the International Law Commission, Mr Georg Nolte, for his presentation of this year's report and to express Estonia's appreciation for the valuable work accomplished by the Commission.

On **crimes against humanity**, Estonia warmly welcomes the work and the significant achievements made by the Commission on this highly relevant topic. We thank Special Rapporteur Mr Sean Murphy for his detailed and comprehensive third report and for the preparation of the respective draft articles with their comments, which represents an important step towards the future convention for crimes against humanity.

Since crimes against humanity still occur in today's world, strong legal measures are needed to prevent such crimes and punish the perpetrators. Regrettably, among the three core international crimes only crimes against humanity still lack a treaty that national laws, national jurisdiction and inter-State cooperation can build upon in the fight against impunity.

Our common goal should be to prevent and to punish perpetrators of such crimes. The Commission's work to clarify the elements of crimes against humanity is a crucial element in this endeavor. The draft articles addressed in the third report aim to ensure effective prosecution of crimes against humanity - the pursuit of measures at the national level and of international cooperation, notably with respect to extradition and mutual legal assistance.

Estonia welcomes the formulations of these draft articles that we consider appropriate and well balanced. We underline the importance of the Special Rapporteur's proposal to include draft article 12, setting out states' obligations in relation to victims, witnesses and others, including access to justice, protection, participation, and reparation. To ensure that victims' rights are fully recognized and ultimately realised, we consider it, however, important to include a definition for the term *victim*, as it may appear to be a gap for determining exactly which persons qualify as "*victims of a crime against humanity*".

We would like to express our appreciation to the aim of keeping the draft simple, clear and in line with the spirit of the Rome Statute of the ICC. The strong relationship between these two legal instruments should be the basis in taking action against the crimes against humanity worldwide.

Mr Chairman,

Concerning the topic of **provisional application of treaties**, we appreciate the work carried out by the Special Rapporteur Mr. Juan Manuel Gómez-Robledo and the Commission on the eleven draft guidelines provisionally adopted and the commentaries thereto. We thank the Secretariat for preparing the Memorandum (A/CN.4/707) on state practice in respect of treaties that provide for provisional application. It gives a valuable insight into legal basis, commencement, scope and termination of provisional application.

Estonia invites the Commission to further develop the commentaries to the draft guidelines in order to provide more clarity on the legal effects and the scope of provisional application. Although they are not legally binding as such, the draft guidelines and the commentaries should aim to reflect as thoroughly as possible the existing rules of international law. In its concrete observations on the draft set of guidelines and commentaries thereto, Estonia aligns itself with the statement made by the European Union.

Estonia finds it pertinent not to lose sight of the fact that provisional application of treaties is a decision to be made ultimately by states (or international organizations) and in accordance with their internal laws. We therefore look forward to the analysis of the information gathered in the Memorandum on state practice and hope that it could be supplemented by a comparative study of domestic laws and practice. As an

example, Section 23 of the Estonian Foreign Relations Act states that the performance of a treaty shall be guaranteed by the Government or a governmental authority authorised therefor. The Government may temporarily (*i.e* provisionally) apply a treaty after approval and prior to the entry into force on the condition that the fundamental rights and freedoms of persons are not restricted thereby and the treaty or a legal act of the Government prescribes temporary (*i.e* provisional) application of the treaty.

Mr Chairman,

On the recommendations for **the long-term programme of the work of the Commission**, we welcome the suggestion to include the topic **general principles of law**. We consider it valuable if the Commission could provide clarification on its nature, scope and method of identification of general principles of law. In line with the work on interpretation of treaty law and identification of customary international law, it could give a comprehensive insight into the three principal sources of international law. In terms of outcome, we support that it should be a set of conclusions with commentaries, which would not aim to be a catalogue of existing general principles of law.

Thank you, Mr Chairman.