



PERMANENT MISSION
OF ESTONIA TO THE UN

Statement of the Republic of Estonia

74th Session of the United Nations General Assembly Sixth Committee

Report of the International Law Commission Cluster I

Mr/Mrs Chairperson,

Allow me to first thank the Chairperson of the International Law Commission and the Commission for the presentation of this year's report and to express Estonia's appreciation for the valuable work accomplished by the Commission.

Mr/Mrs Chairperson,

Estonia would like to congratulate ILC for finalizing their work and adopting draft articles on **prevention and punishment of crimes against humanity** accompanied with commentaries.

Estonia has supported the work of ILC in the field of crimes against humanity from the inclusion of the topic in the ILC's work programme and more actively during the last years. Estonia highly values the work of Special Rapporteur Mr Sean D. Murphy and reports prepared. When expressing our appreciation to Special Rapporteur, we would like to concur with the ILC report, stressing the outstanding contribution Special Rapporteur has made to the preparation of the draft articles through his tireless efforts and devoted work, and for the results achieved in the elaboration of the draft articles on prevention and punishment of crimes against humanity.

We are glad that the process of ILC on the preparation of draft articles and their commentaries has been a transparent and inclusive one and that all interested states, organizations, as well as civil society have had the possibility to contribute. The numerous comments submitted to the ILC show interest and importance that different stakeholders pay to this topic.

For Estonia, this kind of engagement in the discussions of ILC on preparations of draft articles of a possible future international convention has been extremely valuable exercise as this has been for the first time we have entered actively in this type of process. As rules based world order, respect for and promotion of international law, humanitarian law and human rights are at the core of our foreign policy and as incoming Security Council member, we feel that this is our common responsibility to take a stance when question of crimes against humanity is at stake. We can encourage other States who hesitate whether in the future to contribute to this kind of exercise, to do so. We are also inspired by the attention paid in the ILC drafting process to the commentaries of States.

ILC has completed its work and now it is for States to continue it. Estonia would like to join all other delegations who have already expressed their support to the draft articles in their entirety and to the elaboration of a relevant convention based on the draft articles. We are flexible whether the work will be carried out within the framework of UNGA or at an international conference. However, the latter being our preference.

There are two aspects we would like to stress in this connection. Firstly, we would like to express our strong support to the recommendation of the ILC to elaborate a convention based on the draft articles and its commentaries. Secondly, we would like to stress the inclusiveness of the drafting process and its quality, so that after completion of the work, we will come to a universally accepted and universally ratified international convention, which helps to safeguard peace and security and well-being of our nations.

We are satisfied that preamble paragraphs make ample reference to applicable international law including reference that crimes against humanity form peremptory norm of international law, *jus cogens*. We also highly value extensive commentaries of the ILC report to draft articles, which are highly relevant and form important part

of the work carried out by ILC and explain and answer to different concerns raised during the discussions.

As we have already pointed out in our written comments that draft articles take into account the developments of international law, set a realistic outlook for the future and constitute an appropriate basis for the preparation of a convention against crimes against humanity. This is even more so today as ILC has positively reacted to the outcall of many commentaries to the draft articles to leave out the definition of “gender” from draft article 2 definition of crimes against humanity. We very much welcome this development, which takes into account principles of human right and equal treatment. We also appreciate that article 6 “criminalization under national law” includes paragraph 8 according to which states should take measures to establish liability of a legal person for crimes against humanity.

Elaboration of the convention on elimination and prevention of crimes against humanity will fill the current gap in international law and will strengthen the international criminal law system alongside relevant international treaties on genocide and war crimes. This will assist, inspire and oblige states to review their national laws and strengthen international cooperation to stand against most serious international crimes and fight impunity.

Estonia once again commends Special Rapporteur Mr Sean D. Murphy and the Commission for the achievement.

Mr/Mrs Chairperson,

Turning now to the **peremptory norms of general international law (*jus cogens*)**, Estonia would like to welcome the 4th report and convey our gratitude to the Special Rapporteur Mr Dire Tladi for his work on 19 draft conclusions. We believe that our objective as States is to participate and contribute to the development of legal norms and instruments. Estonia welcomes the aim to provide guidance to all those who may be called upon to determine the existence of a peremptory norm.

Estonia would like to express its support to the Draft Conclusion 3. The analysis of international and national case law as well as state practice brings forth that the *jus*

cogens norms are upholding the most fundamental values of international community and therefore the characterisation presented is appropriate.

Paragraph 2 in the Commentary for the Draft Conclusion 4 explains the necessity to establish the existence of the criteria in order to determine whether a norm is of peremptory nature. However, it remains rather ambiguous what does the attempt to establish entail. It might need some further explanation or examples based on either case law or state practice, how it is possible to determine that a norm can be characterised in accordance with paragraph a and b of Draft Conclusion 4.

Estonia welcomes the aim of Draft Conclusion 6 to clarify the requirement of acceptance and recognition in connection with *jus cogens* norms. However, in order to clarify the first paragraph, Estonia suggests to add the legal term of *opinio juris* to the end of the sentence, making it more immediately clear what distinction the paragraph aims to portray.

Draft Conclusion 7 reflecting on what is meant by international community of States as a whole could be further substantiated in the paragraph 6 of the Commentary. It explains that the recognition and acceptance of the “overwhelming majority”, “virtually all States”, “substantially all States” or “the entire international community of States as a whole” is required. Estonia finds that this reference should be substantiated with additional examples of international case law.

Estonia welcomes the new version of Draft Conclusion 10 and 11. The revised Draft Conclusions consolidate the legal consequences of the legality of the treaty and consequences for the parties if a treaty or some provisions of the treaty are in conflict with *jus cogens* norm. Last year a view was expressed and supported by Estonia that the analysis should include international organisations, which can create obligations to states, Estonia would like to emphasize this once more, that *jus cogens* norms should be viewed from this perspective as well. As to Estonia’s observation in 2018 session, we welcome the wording of the Draft Conclusion 12 being in accordance with the Article 71 of the 1969 Vienna Convention on the Law of Treaties.

Considering Draft Conclusion 14, Estonia welcomes the amendments made to the paragraph 1 on the Draft Conclusion and the analysis brought forward in the

paragraph 5 of the Commentary. It captures the suggestions made in 2018 that it should further consider customary international law as main basis for *jus cogens* norms to emerge. However, Estonia finds that the suggestions regarding the issue that the elements required for the development of customary international law – state practice and *opinio juris* – cannot give rise to a norm in accordance with *jus cogens* has not been addressed in the Commentary.

As it was suggested in 2018 that further clarification is required between obligations *erga omnes* and its relation to *jus cogens* norms, Estonia supports the analysis provided in paragraph 2 and 3 of the Commentary to the Draft Conclusion 17. It offers a clear distinction between the fact that all *jus cogens* norms give rise to obligations *erga omnes*, however not all obligations *erga omnes* have *jus cogens* nature.

Estonia supports the Draft Conclusion 21 and that it has been brought in accordance with Articles 65 and 67 of the 1969 Vienna Convention. However, Estonia suggests to approach this question somewhat cautiously because as the Paragraph 4 of the Commentary to the Draft Conclusion explains – it aims to find a balance between not imposing treaty rules on States that are not bound by such rules and taking into account the need to avoid unilateral invalidation of rules.

Estonia welcomes the extensive work reflected in the non-exhaustive list of Draft Conclusion 23 and the added Annex. Estonia believes that such analysis is vital for further discussions on *jus cogens* and for further evaluation on how international law is developing.

To conclude, Estonia supports and welcomes the considerable effort made by the Special Rapporteur. The Draft Articles are developed in a logical and coherent manner. In addition, Estonia welcomes the effort by the Special Rapporteur to level the use of language between the report and the 1969 Vienna Convention.

To conclude, we note that the draft conclusions have been transmitted to States and international organisations for comments and observations and are grateful for this opportunity. We will carefully study the text and reply to the Commission as appropriate.

Mr/Mrs Chairperson,

At the present session, the Commission decided to include the topics **reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law** and **prevention and repression of piracy and armed robbery at sea** in the long-term programme of work. Estonia is supportive of this decision, as these topics are of great interest and value and serve well the criteria for the selection of the topics as presented in the presentation papers.

Thank you for your attention.