



# AUSTRALIA



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## **Report of the International Law Commission on the Work of its Sixty-Ninth Session, Cluster I (Agenda Item 81)**

**Sixth Committee**

**23 October 2017**

**Statement by Mr Michael Bliss, Assistant-Secretary, International  
Legal Branch, Department of Foreign Affairs and Trade**

**(Check against delivery)**

Australia welcomes the Commission's extensive work on the topic of crimes against humanity and the adoption on first reading of a draft preamble, 15 draft articles, and a draft annex, together with Commentaries by the Commission. Australia thanks the Special Rapporteur, Mr Sean Murphy, for his leadership on this topic. We also thank the drafting Committee for its constructive engagement with the Special Rapporteur's proposals. We look forward to giving further consideration to the draft articles over the course of the coming year.

The international community continues to grapple with a range of situations in which these crimes are being committed – crimes that deeply shock the conscience of humanity. Our common objective must be to prevent these crimes, to effectively punish the perpetrators, and to deter future atrocities. States need to abide by their international obligations, including with respect to crimes against humanity, and to condemn other States and non-State actors where such crimes are committed.

We welcome the contribution the draft articles seek to make in complementing the legal framework set out in the Rome Statute of the International Criminal Court for dealing with crimes against humanity. Importantly, the definition of 'crimes against humanity' is taken directly from the Rome Statute, and the general commentary to the draft articles emphasises that the draft articles avoid any conflicts with States' obligations under the Rome Statute.

Australia welcomes the importance the draft articles attach to the adoption of national laws and to the enhancement of inter-State cooperation for the investigation, prosecution and punishment of crimes against humanity. Australia has expressly and comprehensively criminalised crimes against humanity under Australian domestic law, consistent with the Rome Statute and draft article 3 as adopted by the Commission.

Australia considers that the Commission's work on this topic will contribute to the international community's efforts to prevent and punish these crimes and encourage States to implement effective legislative, administrative, judicial or other preventive measures as envisaged by draft Article 4.

Australia also welcomes the Commission's important work on the provisional application of treaties, and the Commission's provisional adoption of draft guidelines 1-11 and commentaries thereto. We thank the Special Rapporteur, Mr Manuel Gómez Robledo, for his extensive work on the topic.

Australia appreciates the Commission's approach to the interaction between States' internal law and provisional application, and the main focus of the Commission on States' obligations on the international plane. Australia welcomes the clarification during the drafting process that draft guidelines 9 and 10 are without prejudice to Articles 27 and 46 of the Vienna Convention on the Law of Treaties.

Australia considers it crucial that flexibility be maintained where States agree to provisional application, to enable States themselves to shape the procedural aspects and substantive consequences of such application. In this regard, we welcome draft guideline 11, which specifically acknowledges the rights of contracting States to limit provisional application on the basis of their own internal laws, and draft guidelines 5 and 6, which provide scope for contracting Parties to agree on these issues themselves.

Australia welcomes the Commission's next tranche of work on these important areas of international law. We look forward to considering further the draft articles on crimes against humanity now adopted by the Commission and transmitted to States for comment, and to engaging with the next proposed draft guidelines on the provisional application of treaties.