



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 on the work of its sixty-ninth session Cluster 2

Mr. Chairman,

Today I will address three topics: (a) the protection of the atmosphere, (b) immunity of State Officials from foreign criminal jurisdiction and (c) succession of States in respect of State responsibility.

Mr Chairman,

The **protection of the atmosphere** is a topic that affects all human beings and the international community as a whole. A subject that intrinsically demands international cooperation. We thank Special Rapporteur, Mr Shinya Murase and the Commission for the work concluded so far on developing guidelines that may assist the international community to address some of the challenges relating to the global protection of the atmosphere.

With regard to the fourth report on the protection of the atmosphere and to the new text of draft guideline 9 and preambular paragraphs as provisionally drafted by the Drafting Committee and adopted by the Commission, we would like to make the following observations.

We note that the first and second paragraph of the new guideline 9 creates a link between the rules relating to the protection of the atmosphere and other relevant rules of international law. We support the Commission's approach to make an express reference to the principles of „harmonization and systemic integration“,

with the view to avoiding conflicts between any new developing rules relating to the protection of atmosphere and rules in other legal fields. We find it important that the guidelines will not compete with but complement the existing international law regime.

We would also like to express our support in addressing in paragraph 3 of the new guideline 9 the plight of those who may find themselves in vulnerable situations because of atmospheric pollution and atmospheric degradation. Whereas the wording „may include, *inter alia*“ indicates that the examples mentioned are not exhaustive, we believe that children, elderly and poorer segments of national population should also be mentioned under vulnerable groups of people.

Mr Chairman,

On immunity of State officials from foreign criminal jurisdiction, I would firstly like to express Estonia's appreciation to the Special Rapporteur Ms Concepción Escobar Hernández for her efforts to prepare the fifth report on the immunity of State officials from foreign criminal jurisdiction.

This topic is clearly a sensitive and important one as all states have a shared responsibility to ensure that perpetrators do not escape justice. Immunities should not be implemented in a way that effectively seeks to shield individuals from accountability for the most serious crimes and defeats the purpose of important universal jurisdiction laws.

As regards the last report, we welcome the inclusion of torture, enforced disappearance and apartheid as separate crimes to the list of the draft article 7 (Crimes under international law in respect of which immunity *ratione materiae* shall not apply). We only regret that the Drafting Committee decided not to include the crime of aggression, mostly due to the pending activation of the Kampala amendment on aggression by the Assembly of States Parties to the Rome Statute. We would be very interested to read the further comments from the states on this matter.

The topic of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction raises many questions and should therefore be analysed comprehensively as it is politically highly sensitive, and has at the same time a very important practical dimension. As the Drafting Committee also

acknowledged at the outset of its deliberations on draft article 7, there is a need to consider close relationship between the question of limitations and exceptions to immunity and the procedural aspects of immunity that will be addressed in the Special Rapporteur's next report.

Estonia supports the position that the Heads of State, Heads of Government and Ministers for Foreign Affairs enjoy immunity *ratione personae* from the exercise of foreign criminal jurisdiction. Despite of the different views on the Foreign Ministers category, we agree with the ICJ that the immunity *ratione personae* is intended to enable the conduct of international relations and the Foreign Minister has plenary competence in international relations (like Heads of State and Heads of Government).

We would like to thank the ILC for its work done which represents an important step towards a common understanding of the relevant international legal norms.

Mr Chairman,

Finally, also some words on the topic **succession of States in respect of State responsibility**, as we are not asking the floor in Cluster 3. We welcome the inclusion of the topic in Commission's programme of work and thank the Special Rapporteur Mr Pavel Šturma for the First report. The work of the Commission helps to codify and develop international law rules in this specific field. We are of the opinion that the consideration of this subject by the Commission is valuable for international community.

We hope that the work of the Commission will shed more light on the question of whether there were rules of international law governing both the transfer of obligations and the transfer of rights arising from the international responsibility of States for internationally wrongful acts in situations of succession of States. We support the notion that the work should follow the main principles of succession of States concerning the differentiation of transfer of a part of a territory, secession, dissolution, unification and creation of a new independent State.

More in-depth research of State practice would be useful and attention should be given to practice from all regions. We support the Special Rapporteur's view that new developments should also be analysed and reflected. We appreciate the work

of Special Rapporteur Pavel Šturma and wish him success with this very complicated topic.

Thank you Mr Chairman!