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## AGENDA ITEM 81

REPORT OF THE INTERNATIONAL LAW COMMISSION  
72<sup>ND</sup> SESSION OF THE GENERAL ASSEMBLY, SIXTH COMMITTEE

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72<sup>nd</sup> Session of the General Assembly, Sixth Committee  
Agenda Item 81, Report of the International Law Commission (Cluster I)  
Statement by Mr. Seoung-ho Shin, Counsellor  
Permanent Mission of the Republic of Korea to the United Nations  
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Mr. Chairman,

My delegation would like to express its deep gratitude to the ILC for adopting the first reading on crimes against humanity and completing the draft convention within such a short period of time. We also would like to express our deep appreciation to the Special Rapporteur, Mr. Sean D. Murphy for his outstanding contributions. We will continue to support such endeavors for active discussion about the new convention on crimes against humanity.

Let us now make some comments on the text of the draft. First, we find it appropriate for the new convention to address extradition under draft article 13 given that there is no global or universal convention on extradition. We also agree that it is not necessary to address the issue of dual criminality under the provision on extradition since the draft articles require each State to adopt crimes against humanity as an offence under their own criminal laws.

Second, my delegation supports the long-form provisions on extradition and mutual legal assistance. Such a specific and detailed approach could contribute to strengthening law enforcement cooperation among States Parties by providing the appropriate legal basis for cooperation, particularly in the absence of a bilateral treaty on extradition or mutual legal assistance.

Third, my delegation would like to emphasize the importance of the provision on the principle of non-refoulement in draft article 5 as it is a well-established principle of international law. No individual should be expelled, returned, surrendered or extradited to another State if there are substantial grounds for the individual to be subjected to a crime against humanity.

Fourth, my delegation would like to make some comments on criminal responsibility of individuals in official positions, which is stipulated under draft article 6, paragraph 5 based on article 27 of the Rome Statute. According to article 27 of the Rome Statute, holding an official position is not grounds for excluding criminal responsibility when an individual commits an offence. The Drafting Committee has dealt with a similar provision this year under draft article 7, paragraph 1 for the topic on ‘Immunity of State officials from foreign criminal jurisdiction’, which states that (I quote) “immunity *ratione materiae* shall not apply for certain crimes under international law including crimes against humanity.” (end of quote) It seems that there could be a variety of opinions on compatibility or the relationship between these two provisions. In this regard, the substance of these two provisions should be carefully reviewed in the ILC drafting process.

Lastly, we support the provision on victims, witnesses and others under draft article 12, which is reflective of article 68 of the Rome Statute. Participation of victims and witnesses and protection for them are vital in legal proceedings given that they can be important sources of information and evidence. Therefore, their safety, physical and mental health, dignity and privacy should be protected in all stages of legal proceedings.

Our delegation would like to thank the Special Rapporteur and the Drafting Committee again for their relentless efforts in drafting the convention on crimes against humanity. We look forward to further discussions on the prospective convention.

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