



Sixth Committee

“Resumed session on Crimes Against Humanity: Cluster II”

Statement by Matthijs Boerma

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Thank you Mr./Madam Chair for giving me the floor

My delegations align itself with the statement made by our distinguished colleague from the European Union.

We believe it is important to use - to a large extent - the definition in the Rome Statute . First of all, differences between international law definitions must be avoided to ensure legal certainty, both at the international level and in national implementation. Secondly, challenging the definitions in the Statute may lead to jeopardising certain achievements, and it is in line with the practice of other international tribunals, including those established by the UNSC.

In relation to gender: The Netherlands considers that regarding the scope of these definitions the focus should be on the evolving jurisprudence international and national legal bodies. The Netherlands is pleased that the ILC in 2019 removed the definition of gender in the draft articles.

The Kingdom of the Netherlands notes that articles 3 and 4 as formulated in the draft articles should be seen as two separate provisions. Regarding obligation to prevent article 3(2) we note that the obligation to prevent depends on the ability of states to influence possible perpetrators of crimes against humanity, in line with the Genocide Convention and international jurisprudence, which we believe can be applied analogously to this draft article. This view is in line with the ruling of the International Court of Justice in the case of Bosnia and Herzegovina v Serbia and Montenegro of 2007. The provision on prevention provides an obligation of conduct, not of result, where states can. The obligation of conduct would require states to employ all means reasonably available to them, so as to prevent crimes against humanity as far as possible. However, territorial states have the primary responsibility to protect their populations from serious international crimes.

The Kingdom of the Netherlands is of the view that the obligation to prevent is further specified in the jurisprudence of the ICJ, which provides useful legal criteria to assess a State's capacity to influence. While this article also contains the obligation to prevent, unlike Article 3, it has a clear delineation of scope included in its first paragraph. It is limited to the territory under a state's jurisdiction. The due diligence is higher when the state can influence individuals that are on its territory, within its jurisdiction.

This concludes our remarks for cluster 2. Thank you, Mr/Madam Chair.