



PHILIPPINES

CHECK AGAINST DELIVERY

STATEMENT

Permanent Mission of the Republic of the Philippines to the United Nations
Agenda Item 78: Crimes Against Humanity (*Cluster III – Articles 6, 7, 8, 9 and 10*)
Sixth Committee
Resumed 77th Session of the United Nations General Assembly
12 April 2023, 10:00 AM
UN Headquarters New York

Thank you, Chair.

The Philippines has the honor to share the following views on Cluster 3 (Articles 6, 7, 8, 9 and 10) of the Draft Articles.

As with the previous interventions, our national law, the 'Philippine Act on Crimes against International Humanitarian Law, Genocide and Other Crimes Against Humanity' (or Republic Act 9851), remains the legal and policy framework against which we submit these preliminary comments on the Draft Articles.

- **On Draft Article 6 on 'Criminalization under national law'**

As crimes against humanity already constitutes an offence under Philippine criminal law, we could support working on the basis of the current language of Draft Article 6(1) which mandates states to take necessary measures to ensure that it is criminalized under national law.

In relation to Draft Article 6(2), our national law specifically states that a person shall be criminally liable as a principal and penalized if he/she, *inter alia*: (1) commits such a crime; (2) orders, solicits or induces the commission of such a crime which in fact occurs or is attempted; and (3) in any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose, with such contribution being intentional and shall be made with the aim of further criminal activity or purpose or made in the knowledge of the intention of the group.¹

As Draft Article 6(3) is also covered under Philippine national law which advances the concept of the responsibility of superiors, we could also work on the basis of this text. However, we would propose the insertion of element of 'effective control' in this regard, such that superiors shall be criminally responsible for such crimes committed by their subordinates under their effective command and control, or effective control or authority, as the case may be, as result of their

¹ Section 8. Republic Act 9851 (Philippine Act on Crimes Against International Humanitarian Law, Genocide, and other Crimes Against Humanity'

failure to exercise control over such subordinates. This would be premised on the fact that the superior either knew or, owing to circumstances, should have known that the subordinates were committing or about to commit such crimes, or that the superior failed to take all necessary and reasonable measures to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.²

This delegation could also support the text of Draft Article 6(4) as the principle has basis in our national law, which states that the fact that a crime defined and penalized under the said law has been committed by a person pursuant to an order of a government or superior, whether military or civilian, shall not relieve that person of criminal responsibility. Orders to commit 'other crimes against humanity' are, by default, manifestly unlawful, in our jurisdiction.³

We could also work on the basis of Draft Article 6(5) as our national law provides legal basis for this and in fact, mandates that 'the law applies equally to all persons without distinction based on official capacity,' However, as with our national law, it would be useful to point out that there are immunities or special procedural rules that may attach to official capacity from suit during tenure shall not necessarily bar any court from exercising jurisdiction over such a person. Further, immunities that may attach to official capacity of a person under international law may also impose some limitations.⁴

Under our national law, the crimes penalized therein, including other crimes against humanity, genocide and war crimes, their prosecution, and the execution of sentences, shall not be subject to any prescription. Thus, we could support Draft Article 6(6) which states that the offences under the said draft article are not subject to the statute of limitations.⁵

We could support the current Draft Article 6(7) as our national law provides for appropriate penalties that take into account the grave nature of the offences under the said article. In general, a person guilty of committing crimes against humanity shall suffer the penalty of reclusion temporal in its medium to maximum period and a fine.⁶

- **On Draft Article 7 on 'Establishment of national jurisdiction'**

Subject to further consideration, we are looking constructively at Draft Article 7. Under our national law, the Philippines shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of, *inter alia*, other crimes against humanity, regardless of where the crime is committed, provided, any of the following conditions is met: (1) the accused is our citizen; (2) the accused, regardless of citizenship or residence, is present in the Philippines; and (3) the accused has committed the said crime against a Filipino citizen.

- **On Draft Article 8 on 'Investigation'**

The Philippines supports the retention of the current text of Draft Article 8 which mandates states to ensure that its competent authorities proceed to investigation whenever there is reasonable

² Section 10, RA 9851

³ Section 12, RA 9851

⁴ Section 9, RA 9851

⁵ Section 11, RA 9851

⁶ Section 7, RA 9851

ground to believe that acts constituting crimes against humanity have been committed in any territory under its jurisdiction.

Our delegation reserves the right to revisit Draft Article 6(8), on the topic of liability of legal persons for the offences; on Draft Article 9 on 'Preliminary measures when the alleged offender is present'; and Draft Article 10 on 'Aut dedere aut judicare.'

Thank you. **END**

PHILIPPINE MISSION TO THE UNITED NATIONS
556 FIFTH AVENUE, NEW YORK, NY 10036 • TEL. (212) 764-1300 • FAX (212) 840-8602

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