



12 April 2023

Statement by Loureen Sayej, Third Secretary, before 77th General Assembly Meeting of the Sixth Committee on Agenda Item 78: Crime Against Humanity (Cluster III):

Mr. Chair,

The State of Palestine reiterates its position that the effective criminalization of crimes against humanity is necessary to ensure, first and foremost, the protection of peoples, and the efficacy of the draft articles on prevention and punishment of crimes against humanity. The obligation to establish national jurisdiction over crimes against humanity in domestic legal systems follows from various treaties and customary international law. Thus, it is necessary that national laws ensue accountability for the commission of crimes against humanity.

We are discussing and deliberating the draft articles on the prevention and punishment of crimes against humanity, with an emphasis on prevention. As such, for criminal liability, the concern is not merely with the occurrence of crime but also with its prevention. We have enough history to recognize the role of incitement in the physical realization of the message. Those who incite should not go unpunished. In this regard, the State of Palestine joins others in affirming that incitement to commit or threat to commit crimes against humanity, in public as well as in private, or directly or indirectly, is a well-established mode of liability under international criminal law and we call for its inclusion in Article 6(2).

In regards to Article 6(4), the State of Palestine reiterates its long-standing position that there “are no grounds for excluding criminal responsibility” as it is incompatible with the prevention and punishment of crimes against humanity and look forward to discussions with other States on this point.

In regards to jurisdiction, primacy should also be given to personal jurisdiction. We believe that a State has similar obligations to investigate crimes against humanity committed by its organs, armed forces, and private personnel, wherever they may be acting including on a foreign territory.

The State of Palestine is encouraged by the ILC’s language on “ prompt, thorough and impartial investigation” and the general duty and the threshold of “ reasonable ground to believe” but we are convinced that this is not enough. Investigations into crimes against humanity have to be legitimate, available, effective, and sufficient.

For example, in this context, concerns have been raised about military courts for their impartiality and lack of independence in the administration of justice. We stress that independence of the Courts is fundamental to the effectiveness of an investigation or a remedy. Sham investigations carried out in bad faith only shield the perpetrators and provide a legitimacy for the commission of crimes. Also, in relation to Article 8, we are of the view that “act” instead of “acts” is more appropriate. A single widespread and systematic act against any civilian population would indeed constitute a crime against humanity.