

Resumption of 77th Session of General Assembly, Sixth Committee (Agenda: Crimes against humanity) Cluster 4

Statement by CHANG, Wun-jeung, Director of Treaties Division,

Ministry of Foreign Affairs of the Republic of Korea.

<Check against delivery>

Mme/Mr. Chair

Cluster 4(draft Articles 13(Extradition), 14(Mutual Legal Assistance), and Annex) relate to the interstate measures to effectively investigate, prosecute and prevent against the alleged offenders of crimes against humanity.

It is essential that each state criminalizes crimes against humanity under its national law. However, given and judicial sovereignty and the nature of the globalization of crimes interstate cooperation by extradition and mutual legal assistance is also required to ensure that crimes against humanity are properly and effectively punished.

Draft article 13 provides that crimes against humanity shall be deemed as an extraditable offence and an offence in the draft articles shall not be regarded as a political offence, which is often a ground for refusal of extradition.

Draft Article 13, however, does not provide grounds for refusal of extradition in detail. It just says that extradition shall be made under the conditions of the national law of the requested State and applicable extradition treaties. Therefore, given this condition and the judicial sovereignty of a State, we believe that a member state should refine its domestic law to fully reflect the purpose of the ILC draft articles.

For example, granting amnesty to offenders who committed crimes against humanity may serve as an obstacle in carrying out request of extradition although the ILC commented that an amnesty by one state would not hinder

prosecution by another state over that offence.

Draft article 14 and the Annex are about facilitating mutual legal assistance on crimes against humanity. Although there are relatively new factors such as taking evidence by video conference or obtaining forensic evidence, most of contents reflect existing model treaties of mutual legal assistance. Therefore, my delegation does not believe that the draft article 14 threatens the judicial independence of a Member State.

Once well established, especially among States which do not have bilateral or multilateral treaties in this regard, the interstate cooperation framework will contribute to preventing crimes against humanity by raising the possibility of punishing perpetrators effectively as well as by isolating them diplomatically.

Draft article 15 is about settlement of disputes. The paragraph 1 only refers the obligation to settle disputes concerning the interpretation or application of the draft articles. So it is not clear that the dispute includes those relating to the responsibility of a state failing to comply with obligations under the draft articles.

Paragraph 2 of draft Article 15 provides that any dispute not settled by negotiation shall be submitted to the ICJ, unless States agree to submit the dispute to arbitration. And paragraph 3 of the draft Article provides that each State may declare that it does not consider itself bound by paragraph 2 of this draft article. My delegation understands that this opt-out clause is a realistic compromise to invite States which are not willing to be bound by mandatory dispute settlement mechanism.

I thank you.