



**PERMANENT MISSION OF THE REPUBLIC OF
SIERRA LEONE TO THE UNITED NATIONS**

STATEMENT

by

**H.E. DR. MICHAEL IMRAN KANU
Ambassador and Deputy Permanent Representative**

**Resumed Session of the Sixth Committee
of the United Nations General Assembly**

**Agenda Item 78: "Crimes Against Humanity"
Fourth Cluster: *International measures
(Articles 13, 14 and 15 and annex)***

**Seventy-Seventh Session
12 April 2023**

UNHQ, New York

[Please Check Against Delivery]

**336 East 45th Street, New York NY 10017
Tel: (212) 688 1656 - FAX (212) 688 4924 email: sierraleone@un.int**

Chair,
Co-Facilitators,

1. In consideration of the fourth cluster focusing on “**international measures**” covering **Articles 13, 14, 15** and the **annex** of the International Law Commission’s (“ILC” or “Commission”) articles on prevention and punishment of crimes against humanity, the delegation of Sierra Leone expresses the general point that the articles in this cluster are considered to be most important in view of the legal gap that will be filled by particularly Articles 13 and 14.
2. We therefore welcome the important clauses on extradition (Article 13) and mutual legal assistance (Article 14).
3. On **Article 13, extradition**, my delegation appreciates the Commission’s conclusion that, although they frequently occur in political contexts and are sometimes perpetrated for political gain, core international crimes such as genocide, crimes against humanity and war crimes are not to be regarded as “political offences” for the purposes of denying extradition.
4. This principle, we note, is enshrined in Article VII of the Convention on the Prevention and Punishment of the Crime of Genocide. Equally, though not found in the 1949 Geneva Conventions, it is consistent with the more recent State practice when concluding multilateral treaties addressing specific international and transnational crimes. Its inclusion is helpful to crystallize State practice and consolidate customary international law.

5. Concerning the first part of paragraph 2 of Article 13, which may seem to be ambiguous, our understanding is that because crimes against humanity implicate a list of prohibited acts when committed in a certain context (the chapeau requirements that form part of the contextual threshold), we presume that Article 13 on extradition will not apply when only the individual underlying prohibitive acts are in issue.
6. For instance, rape as an ordinary crime under national law would not be an extraditable offence under the present article although an act of rape that is perpetrated as part of a “widespread or systematic attack” against “any civilian population” would certainly qualify as a crime against humanity. It would thus be an extraditable offence.
7. In noting the level of detail to Article 13, it may be the case that the detailed provisions on rights, obligations and procedures applicable to extradition may be helpful to States that may want to rely upon the provisions as basis for extradition from another State for which no extradition treaty exists between them. On our part, given the implications in relation to our Extradition Act, 1974 and existing treaty obligations, we will continue to study the provisions of this important Article and impact on implementation, including ensuring consistency. This is an issue we will examine closely in the resumed 78th session of the Sixth Committee.
8. Regarding **Article 14** and **Annex**, on mutual legal assistance, my delegation has expressed the view that the detailed provisions on mutual legal assistance (“MLA”) is fundamental to the regime that would be established by a future crime

against humanity convention based on the Commission's articles. Given our experience already in implementing the 2003 United Nations Convention against Corruption, which serves as one of the inspirations for the provisions of Article 14, we express general satisfaction with the approach taken.

9. From a policy perspective, we welcome the provision mandating States to “*afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the present [...] articles*” in accordance with Article 14 (see Article 14, paragraph 1).
10. Presently, with the proliferation of the misuse and abuse of the internet and social media, inciting statements have been directed to Sierra Leone by nationals resident outside of Sierra Leone, stoking violence and the commission of the prohibited acts listed in Article 2, including recent killings of police officers. Without getting into the chapeau requirements in Article 2, we are concerned by the challenges and double standards in the existing MLA framework. We therefore see merit for the purposes of a future crimes against humanity treaty for the MLA provisions to be sufficiently helpful to achieve the objectives of such a treaty.
11. On **Article 15, settlement of dispute**, Sierra Leone considers that the dispute settlement clause, which borrows heavily from the transnational crimes context, may be unworkable for a crimes against humanity convention.

12. First, Sierra Leone is not entirely convinced that a three-tier model of dispute settlement is desirable in the context of commission of one of the worst crimes known to international law. Among the reasons for this is the first paragraph requirement to settle disputes concerning interpretation and application of the future convention through negotiations. Would a State that might be under accusation of crimes against humanity against its own population be willing to negotiate with another State party, and if so, would it do so in good faith?

13. Second, Article 15 contemplates a system of opting in and opting out that may be appropriate for conventions that are truly reciprocal in nature. The prohibition of crimes against humanity, like genocide, is driven by more humanitarian compulsions. Experience suggests that States do not often act against other States solely to preclude the commission of such crimes. All the more so if the officials of the other State are themselves implicated in the commission of the crimes. Already, in the last seven decades of having a dispute settlement clause for the genocide context, only a relatively small number of single or joint cases based on that dispute settlement clause have been actually initiated by States. This suggests that many States might not invest the political and other capital required to initiate disputes against other States even where crimes against humanity are being committed.

14. Lastly, and this to us is extremely important, the current dispute provision provides lesser than what the other true international crime codified in the 1948 Convention on the

Prevention and Punishment of the Crime of Genocide provides for. For instance, it fails to address the issue of state responsibility for crimes against humanity. Since the crimes against humanity treaty would be more comparable to the Genocide Convention, Sierra Leone considers that Article 15 on settlement of disputes should at least establish the compulsory jurisdiction of the International Court of Justice along the same lines contemplated by Article IX of the Genocide Convention. This would put a potential crimes against humanity convention on the same plane as the Genocide Convention.

15. Since the ILC do not usually address final clauses, Sierra Leone would suggest the following dispute settlement clause contained in Article IX of the Genocide Convention text with minor stylistic changes for the consideration of member States as follows:

“Disputes between [States] relating to the interpretation, application or fulfilment of the present [draft articles], including those relating to the responsibility of a State for [crimes against humanity] or for any of the other acts enumerated in article [2], shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”

Chair,

16. Sierra Leone had already noted that the Commission did not advance any proposals for a **monitoring body** or **mechanism**,

even though the issue was raised by a number of members of the Commission, who were strongly in favor of including such a mechanism. In our referenced written comments, we had expressed agreement with them.

17. The delegation of the Sierra Leone is of the view that States should give serious consideration to include a monitoring mechanism, and based on available precedents, we can carefully tailor a monitoring body for crimes against humanity. Relevant precedents would include the Human Rights Committee and the Committee against Torture. Such a body should reflect the lessons learned and best practices developed by such bodies to lessen reporting burdens on States. It may be a State-driven mechanism, but of course, could be comprised of independent experts serving in their personal capacities. That might better assist in the proper monitoring and implementation of a future crimes against humanity treaty.

18. I thank you.