

**Statement by the Republic of Türkiye  
at the Resumed Sixth Committee Session  
"Crimes against humanity"  
United Nations, New York  
12 April 2023**

**CLUSTER 3**

*Check against delivery*

Thank you Mr Chair,

Regarding the third cluster, we would like to make the following observations and comments:

We are of the opinion that, the criteria governing responsibility of military commander and superiors, contained in article 6, are ambiguous and need clarification.

Furthermore, paragraph 31 of the commentary to draft article 6 states that, the fifth paragraph of the said draft article is without prejudice to the “procedural immunity that a foreign state official may enjoy before a national criminal jurisdiction, which continues to be governed by conventional and customary international law.” For clarity, Türkiye recommends that this statement should be incorporated into the text of the draft article itself. This would ensure that this draft article will be interpreted in accordance with well-established principles of international law.

On this note, and as has been suggested by other delegations as well, we also believe that a clause regarding the principle of non-retroactivity needs to be included in the articles. This approach would also be compatible with the applicable rules of international law on treaties.

We believe that paragraph 8 of draft article 6, which provides that the state shall take measures to establish criminal, civil or administrative liability of legal persons for the offences referred to in the current draft article, does not reflect existing customary international law. As acknowledged by the commentary to this draft article, most tribunals to date did not include a provision on criminal liability of legal persons. The liability of legal persons has also not been included in many treaties addressing crimes at the national level. There is neither sufficient state practice, nor established rules of customary international law to this effect. Thus, the said provision should be excluded.

Mr Chair,

Although the concept of crimes against humanity originates from international law, it lacks internationally agreed rules and standards, unlike other crimes under international law. As noted in the ILC commentary on this topic, there is no global convention dedicated to preventing and punishing crimes against humanity and promoting inter-state cooperation in this regard. We wish to underline that the proposed rules, concepts and mechanisms should be established with utmost diligence, in a structured manner and full clarity. Crimes against humanity have highly political

nature as well, by definition involving state officials. It poses the risk to be exploited for political reasons. This risk is especially embedded in draft article 7.

One of the most fundamental principles of international criminal law is that states have the primary sovereign prerogative to exercise jurisdiction in their national courts over crimes against humanity that have been committed in their territory or by their nationals. This principle is consistent with the notion that the State with territorial or active personality jurisdiction is usually best suited to effectively prosecute crimes. Thus, we believe that it is in the interest of justice that territorial or national jurisdiction should be given primacy.

Our understanding is that universal jurisdiction under draft article 7 can only be exercised in respect of nationals of states parties. In other words, in our view, the said draft article only permits states to establish jurisdiction over nationals of non-party States.

Thank you.