

**Resumption of the 77th Session of the General Assembly, Sixth Committee
(Agenda: Crimes Against Humanity), Government Opinion**

Ministry of Foreign Affairs of the Republic of Korea

I. General Comments and Observations

The Republic of Korea is committed to uphold the international order based on rules and principles. In general, the Republic of Korea believes that the draft articles on prevention and punishment of crimes against humanity will complement the existing legal framework to outlaw crimes against humanity and to facilitate cooperation among States to prevent and suppress these crimes. In addition, the Republic of Korea takes note that the draft articles provide a suitable legal basis for strengthening cooperation in law enforcement among States, particularly where there are no bilateral treaties on mutual legal assistance or extradition.

The Republic of Korea enacted a domestic law on the punishment of crimes under the jurisdiction of the International Criminal Court¹, including crimes against humanity. The Republic of Korea believes that a Convention based upon these draft articles will contribute to promoting national legislation in other countries and could ultimately facilitate the punishment of crimes against humanity in national jurisdictions.

The urgency of preventing grave crimes against humanity and protecting innocent victims cannot be overstated. It is crucial for Member States to demonstrate their collective will to address this imperative. The Republic of Korea sincerely hopes that the conversations through the second resumed session of the Sixth Committee will serve as a platform to positively engage with as many

¹ *Act on Punishment, etc. of Crimes under Jurisdiction of the International Criminal Court* (Act No. 10577, 12 April 2011, Partial Amendment)

States as possible on this agenda item.

II. Specific comments on the draft articles

1. Draft Article 2 – Definition of crimes against humanity

With regard to draft article 2 in general, the Republic of Korea has noticed that diverse opinions are being expressed among Member States. However, most of the content of the draft articles, including the definition of crimes against humanity in draft article 2, generally reflect customary international law and existing rules and principles from relevant treaties. Therefore, the Republic of Korea is confident that these differences can be bridged through constructive dialogue and a well-structured working mechanism with a strong mandate.

In this regard, it is imperative that the draft articles harmonize with the provisions of the Rome Statute, particularly concerning the definition of crimes against humanity, to avert potential ambiguities. Therefore, the Republic of Korea expresses its general support for the current draft articles, which reflect the definitions set out in the Rome Statute.

Paragraph 3 of draft article 2 provides flexibility to States in expanding their own definition of crimes against humanity. Some States may refine their domestic laws to further strengthen the investigation, prosecution and punishment of these crimes.

2. Draft article 13 Extradition

Regarding the issues related to extradition and mutual legal assistance, it is essential that each State criminalizes crimes against humanity under its national law. However, considering judicial sovereignty and the globalization of crimes, inter-State cooperation through extradition and mutual legal assistance is also required to ensure that crimes against humanity are properly and effectively

punished.²

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

This Article, however, does not provide detailed grounds for when extradition may actually be refused. It merely states that extradition shall be made under the conditions of the national law of the requested State and applicable extradition treaties. Given this condition and the judicial sovereignty of States, the Republic of Korea believes that States should fully reflect the purpose of the draft articles in their domestic laws.

3. Draft article 14 - Mutual legal assistance

Draft article 14 and its annex concerns the facilitation of mutual legal assistance on crimes against humanity. This article introduces a few new factors not certainly found in existing treaties, such as taking evidence by video conference or obtaining forensic evidence. However, most of the content reflects existing model treaties on mutual legal assistance. Therefore, the Republic of Korea believes that draft article 14 could enhance mutual legal assistance practices between States.

A well-established inter-State cooperation framework for extradition and mutual legal assistance, especially among States without existing treaties, will significantly contribute to preventing and punishing crimes against humanity.

² The Republic of Korea already criminalized crimes against humanity through the legislation of the implementation law of the Rome Statute (*Act on Punishment, etc. of Crimes under Jurisdiction of the International Criminal Court*). The Republic of Korea has also legislated the *Act on International Judicial Mutual Assistance in Criminal Matters* (Act No. 17825, 5 January 2021, Partial Amendment) and the *Extradition Act*. Mutual legal assistance and extradition of criminals are being executed based on these laws.

4. Draft article 15 Settlement of disputes

Draft article 15 is about settlement of disputes. However, paragraph 1 only refers to the obligation to settle disputes concerning the interpretation or application of the draft articles. It lacks clarity on disputes relating to a State's failure to adhere to its obligations under these articles.

Paragraph 2 of draft article 15 provides that any dispute not settled by negotiation shall be submitted to the International Court of Justice, unless the States agree to submit the dispute to arbitration. 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. The Republic of Korea understands that this opt-out clause is a realistic compromise to invite States which are not willing to be bound by a mandatory dispute settlement mechanism, and is prepared to support it for this reason. /END/