

# **Permanent Mission of India to the UN**

**New York**

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## **6<sup>th</sup> Committee of the 78th Session of the UNGA (Agenda Item 80)**

### **“Crimes Against Humanity”**

#### **India Statement**

The objective of international law is upholding the age-old universal value of humanity. Thus, any serious violations of international law are contrary to the spirit and aims of the United Nations. The Member States have the responsibility and obligation to ensure justice and accountability for gravest violations of human rights and mass atrocities, in line with their national legislation.

2. As we deliberate on all aspects of the draft articles proposed by the International Law Commission (ILC) on prevention and punishment of crimes against humanity in accordance with GA resolution adopted last December, we believe that many of the member states share the common concern that these Draft Articles have been put together by analogy or deduction from the provisions of other international conventions. Such existing international instruments elaborately address the issue of crimes against humanity.

3. Evidently, the draft articles are inspired by the Rome Statute of the International Criminal Court and the Convention on the Prevention and Punishment of the Crime of Genocide. Several countries in Africa and Asia, including India, are not parties to the Rome Statute.

4. We are of the view that there should be no attempt to impose legal theories or definitions derived from other international agreements that do not enjoy universal acceptance. Our understanding is that those Member States that have not subscribed to the Rome Statute, have extant national legislation in place to deal with such offenses.

5. The fragmentation of views on the draft Articles implies a lack of consensus to address all its aspects unanimously. Attempts to incorporate definitions emanating from non-universal instruments, let alone national laws and practices in the context of progressive development, has hindered the process by preventing the member States from further reaching consensus.

6. India conforms to the principle that the State with territorial or active personality jurisdiction is best suited for effective prosecution of crimes against humanity. It is in the interest of justice, the rights of the accused, with due consideration to the interests of victims and other such considerations, that territorial or national jurisdictions should be given primacy.

7. We believe that a clear jurisdictional linkage principle should be established for exercise of jurisdiction by States over crimes committed by their nationals. Our view is based on the fundamental principles of international law that States have the primary sovereign prerogative to exercise jurisdiction through their

national courts over crimes including crimes against humanity, that have been committed either in their territory or by their nationals.

8. As already said, India is not in favour of simple transposition of already existing regimes into a new convention, however we have and continue to engage constructively to find solution to various anomalies in the draft articles and more particularly;

- I. Exclusion of terror related acts and use of nuclear weapons specifically from the definition of crime against humanity (Article 2). Are such acts not so egregious crimes as to qualify for being referred to as crimes against humanity. In this context it would be worthwhile to note that when the Nuremberg Trials took place, the concept of “Terrorism” was alien to us. But over the past four decades, we have seen the devastation caused by terror related activities. It has further been evident that many States have actively connived in such activities and provided support to such groups. In such circumstances should we take that ILC does not recognize that such crimes endanger the important contemporary values “the peace, security and well-being of the world”.
- II. The use of word “shall” in paragraph 1 of Draft Article 5 (Non-refoulement), on the one hand makes it obligatory on a State not to expel/return persons intruding into its territory, whereas, on the other hand by incorporating word “believing” in the same paragraph, a window for non-compliance is left open by affording discretionary powers to the same State. Besides, this Article has the effect of overriding the existing bilateral treaties between States concerning extradition and/or mutual legal assistance.
- III. Multiple States may have jurisdiction in a given situation and may wish to exercise such jurisdiction. The draft article 7 (Establishment of National Jurisdiction), does not explain how such potential conflict of jurisdiction can be resolved.

Similarly paragraph 2 of Article 7, besides overriding the existing bilateral treaties between States concerning extradition/mutual legal assistance, would further complicate the issue of jurisdictional conflict.

(Note: Primacy should be accorded to the State that can exercise jurisdiction on the basis of at least one of the sub-paragraphs (a) to (c) of Article 7 (1). It goes without saying that such a State would be more interested in prosecuting the offender in question).

- IV. As regards Draft Article 13 (Extradition), we observe that paragraph 2, provides that “Each of the offences covered by the present draft articles shall be deemed to be included as an extraditable offence in any extradition treaty existing between States...”

9. India remains of the view that instead of this deeming clause, it should be left to the prerogative of the States to incorporate such offences in their existing bilateral treaties.