

In the Name of God, the Most Compassionate, the Most Merciful

**Statement by the representative of the Islamic Republic of Iran
Before the Sixth Committee**

On Draft Articles on the Prevention and Punishment of Crimes against Humanity

Cluster 2: Definition and general obligations

(Resumed session 1-5 and 11 April 2024-New York)

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Mr. Chair.

The provisions on definition of crimes against humanity contained in this draft Article, have in a way departed from the one set out in Article 7 of the Rome Statute. The current formulation in the Draft Article 2(3) states that “This draft article is without prejudice to any broader definition provided for in any international instrument, in customary international law or in national law”. We have serious doubts whether this paragraph serves the purpose of the topic under consideration as it may foreshadow further fragmentation of international law. This reflection is without prejudice to the basic position and observation of the Islamic Republic of Iran with regard to some elements of the crimes against humanity as incorporated in Article 7 of the Rome Statute itself.

The definition of crimes against humanity could have a direct reference to unilateral coercive measures against civilians so as to in a clearer manner address other unlawful measures that amount to crime against humanity. Unilateral coercive measures which are imposed systematically and in a widespread manner against civilian populations, among others, intentionally inflict conditions of life upon the population, *inter alia*, the deprivation of access to food and medicine, which could also result in deaths among the population.

The reference to the “customary international law” will challenge the non-hierarchical order between the main sources of international law and, in practice, put into question the defined scope of the proposed text. This is also the case with regard to “the international instrument” in paragraph 3 of draft Article 2, especially in the light of the explanation made in the commentary that ILC understood it as beyond legally binding international agreements and that it might encompass other instruments such as resolutions of the international organizations.

Since crimes against humanity are one of the most egregious crimes, the threshold should be different from and higher than other less serious crimes. This is important not only for ensuring legal exactitude in distinguishing as between such atrocious crimes and other crimes but also to better reflect the gravity of the former. Such an approach could also forestall politicized attempts of few who intend to abuse the noble cause of countering crimes against humanity as a disguise for advancing self-serving and highly politicized interpretations. In similar vein, the enumerated acts listed in article 2(1) could be considered “Crimes Against Humanity” if they are committed as part of a widespread “and” systematic attack against civilians.

Mr. Chair.

The formulation of draft Article 3, according to which crimes against humanity are “crimes under international law” is, to some extent, confusing. There exists other treaty-based definitions of certain other “crimes under international law”, such as transnational organized crime, corruption, etc. which have not amounted to a customary-based definition. It is for that reason that the expressions “the most serious crimes of international concern” as well as “the most serious crimes of concern to the international community” have been utilized in the Rome Statute. This formula is not even consistent with the one proposed in the fourth preambular paragraph of the draft Articles, which states that crimes against humanity, “are among the most serious crimes of concern to the international community as a whole”.

As we mentioned before, we see merits in reiterating in the preamble as well as in an appropriate place in the initial Draft Articles, the necessity of compliance with the principles of sovereign equality, non-intervention, and territorial integrity throughout efforts in prevention and punishment of crimes against humanity.

Finally, as for obligation of States to prevent crimes against humanity, the current formulation is too broad and leaves very less freedom for the national systems in terms of administrative and procedural matters. It will ultimately add on to the legal ambiguity on the scope of prevention. On a similar note, the Draft Article has not provided the legal basis, if any, as well as the practice of States for the reference made in subparagraph b of paragraph 1 of the draft Article 4 providing that States are under an obligation to cooperate, as appropriate, with “other organizations”, especially taking into account that in of the commentary, “other organizations” could include non-governmental organizations. Therefore, this issue should be reconsidered with much caution since it seems inappropriate to impose such an obligation upon States.

Thank you.