



Permanent Mission of Italy
UN - New York

Resumed session – Crimes against humanity (Cluster 2)

Statement of Italy

Delivered by Mr Enrico Milano

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Thank you Madam Chair/Mr Chair,

My delegation aligns itself with the statement delivered by the distinguished representative of the European Union and would like to add some remarks in national capacity concerning the provisions of Cluster 2.

With regard to the definition under Article 2, during the discussions in the Sixth Committee at the time of preparation of the draft articles Italy was among those States that expressed the importance of substantively aligning the definition with that of Article 7 of the Rome Statute, in order to avoid inconsistencies between relevant legal instruments. We are pleased to see that that requirement was taken into account and we can support Article 2 as drafted.

More specifically, we note that the definition under Article 2 contains the key requirement that the attack is made in pursuance or in furtherance of a State or organizational policy, which is one of the key features of the case law elaborated by international courts and tribunals. As well expressed in the Commentary to Article 2 that does not require that the offender be a State official or agent. In fact crimes against humanity can emanate from non-state entities and organizations, such as de facto political groups, rebels or even criminal organizations.

In Italy's view, paragraph 3 is also an important legal provision since it makes clear that the definition under Article 2 constitutes a minimum common denominator that does not prejudice broader definitions contained in other international instruments, in customary international law or in national legislation. Hence States may agree to international cooperation also with regard to broader definitions of crime, such as in the case of the 2006 International Convention for the Protection of All Persons against Enforced Disappearance, where no State or organizational policy is required for the commission of the crime of enforced disappearance and disappearance "for a prolonged period of time" is not required.

With regard to Article 3, Italy can support the provision as it stands.

Article 3, paragraph 1, identifies a clear legal standard from the perspective of law of State responsibility, in the sense that acts constituting crimes against humanity which are attributable to the State under the secondary rules on attribution are prohibited under the treaty.

Paragraph 2 of the same provision provides for an obligation of due diligence, in the sense that the State in question is required to use the means at its disposal to prevent the commission of crimes against humanity directed against the civilian population. Needless to say, the application of such obligation of due diligence requires a case-

by-case evaluation, where all relevant factors will have to be taken into account, including the capacity of the State to exert control and influence over a group of persons that are likely to commit or are committing crimes against humanity. Paragraph 2 also contains the important element that crimes against humanity are not necessarily committed in the context of an armed conflict.

Finally, with regard to Article 4, Italy would like to note the following.

The obligation of prevention refers to positive actions both in the territory under the jurisdiction of the State through appropriate legislative, administrative or judicial measures and in international relations through international cooperation involving other States, international organizations or, where appropriate, other organizations such as the International Red Cross. The requirement that such actions must be conducted “in conformity with international law” is an important one: the prevention of crimes against humanity internally shall not involve the violation of fundamental human rights and externally does not justify measures, which are beyond the limits imposed by international law, including with regard to use of military force.