

Thank you Madam Chair for giving me the floor. Once again, we align ourselves with the statement delivered by the EU.

On Article 2 (**Definition of crimes against humanity**), we believe our debate would benefit if, rather than discussing the nature of the source, we would focus on the legal arguments behind the decision that was taken by the ILC (and, like the US just said, whether this is a good basis to start from). And, if you look at the legal arguments, it is only logical that the ILC used the definition contained in Article 7 of the Rome Statute as a starting point for this exercise (and I stress the expression “starting point”, which other colleagues have also used before me). In our view, this was done **not** to impose the Rome Statute on non-states parties, it was **not** to suggest the RS should be accepted by those that don't want to subscribe to it. It was because there are legal reasons to do so, and they were spelled out very clearly by the Commission and we believe we would be better off if we discussed those legal arguments when debating if this is a reasonable starting point.

And what arguments are those? First, the definition took a lot of work and time to develop, first within the ILC and then was the product of in-depth exchanges between our predecessors (so, it's not a definition created and owned by the parties of the RS, rather it's the product of a broader and much more inclusive exercise, that included the MS represented here). Second, it largely reflects customary international law, it's widely supported by State practice, and it incorporates many elements from other international treaties (and this has been recognized by international courts and tribunals over the years). Third, precisely because of that, drawing from such a definition is important to ensure broader **consistency** in international law and avoid fragmentation. We

therefore consider this model as a good basis for developing a definition, which is not to say that we **should** simply copy and paste it into a future treaty on CaH.

In fact, the ILC itself introduced some tweaks into the RS definition, one of which – that we welcome - is the removal of the definition of “gender”, which allows greater flexibility and protection compared to previously adopted solutions, in addition to adapting to the reality we currently live in (and we think Brazil made pertinent points about this issue and the flexibility we want to preserve here). Like others, we think that further adjustments might be appropriate, such as the definition of “**enforced disappearance**” and the definition of “**persecution**”, both of which can benefit from being **broader** and **further aligned** with definitions that can be found in other treaty law and in customary IL (other colleagues, like Brazil and Argentina, have elaborated on the arguments for this). Ultimately it will be up to us, Member States, to decide how and to what extent we will adjust what the ILC put before us in light of the specific nature of this this treaty and it will be up to Member States to determine (including by drawing from other sources) to what extent there’s a level of progressive develop that might be warranted in this particular context (although we would also stress that there’s a delicate balance to be found between elements of progressive development and legal certainty and consistency, which are important aspects when we strive for accountability). We welcome this discussion and look forward to hearing what ideas colleagues have on the specific elements of the definition and how to improve it, although we should add that this is something we will only be able to address once we move into the negotiation of a convention.

Last session, we heard some delegations' comments regarding paragraph 3 of draft Article 2 and on the concern with harmonization or lack thereof brought by this provision (and concerns with it allowing for broader definitions); in our view the provision offers a good balance between the goal of having an internationally agreed definition, the goal harmonizing national laws for the purpose of facilitating inter-State cooperation, on the one hand; and the purpose of ensuring flexibility and respecting the possibility of a States adopting or retaining a broader definition, on the other; and we welcome that this provision indicates that the definition is a "floor" rather than a "ceiling", but we're obviously happy to further discuss it and further understand the concerns that were raised.

Turning to draft Article 3 (**General obligations**), we see it as a fundamental provision in the context of the draft articles, to the extent that it clearly sets out and spells out the obligations of States not to engage in, and to prevent and punish crimes against humanity, and the whole set of articles revolve around these obligations and how to operationalize them. Because – regardless of the existing framework, in particular under the Rome Statute, on *individual* criminal responsibility – there is gap in terms of establishing (or recognizing) that there are obligations *for States* under international law in regard to prevention, prohibition and punishment of CaH, whose breach trigger state responsibility - and this is what this treaty, and in particular these provisions, will be capturing. And on this issue of highlighting the role of States, on stressing that we're talking about obligations for States, and to emphasize that this project is about horizontal judicial cooperation for accountability and justice for CaH, we would like to say we could support Italy's comments on adding the expression "by States" in Article 1.

On draft Article 4 (**Obligation of prevention**), like others, we would like to stress that the obligation to prevent the commission of crimes is not specific to these draft articles; we can find similar references in many conventions (we note that in the commentaries to this Article, the ILC provided a comprehensive list of examples). And as we said earlier, we believe the obligation to prevent and the obligation to punish go hand in hand and are mutually supportive.

When it comes to the qualification to be found in the **latter** part of the chapeau of Article 4, we want to quote from the ICJ to emphasize that, when engaging in measures of prevention, [quote] “it is clear that every State may only act within the limits permitted by international law” [end of quote]. We thus fully support the reference to this clause, which indicates that any measures of prevention must be “in conformity with international law”, which to us means that measures undertaken by a State to fulfil its obligation to prevent crimes against humanity must be consistent with the rules of international law, including those on the use of force established in the UN Charter, international humanitarian law, and human rights law.

We agree that the provisions of Article 4 provide a combination of guidance and enough flexibility that States can use when implementing this obligation, and we acknowledge that the commentaries to the draft Articles offer further guidance that can be useful in this respect. We note in particular the reference to cooperation between States, which is one of the main tenets of these draft articles and which reflects the duty to cooperate contained in the UN Charter and other instruments of international law, while also acknowledging the flexibility with respect to cooperation with other organizations.

This concludes my comments for now, Madam Chair. I thank you.