

 Permanent Mission
of Austria to the
United Nations in New York

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Sixth Committee**

Agenda item 80: Crimes against humanity

**Statement by Mr. Maximilian Gorke
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[Cluster 3]

Thank you, Mr./Madam Chair

My delegation fully aligns itself with the statement made by the European Union and would like to make the following additional remarks in our national capacity:

With regard to **Article 6 paragraph 3** we do not share concerns of others that command responsibility is not sufficiently narrowly outlined – similar wording was used successfully by numerous international criminal tribunals. However, the wording of Art. 28(a) of the Rome Statute could be used to focus more narrowly on effective control. As explained in the ILC commentary, individual criminal responsibility as provided for in **Article 6 paragraph 5** has no effect on the procedural immunity of foreign state officials under customary or conventional international law. We reiterate our position that crimes against humanity shall not be subject to any statute of limitations, as provided for in **Article 6 paragraph 6**. In line with **Article 6 paragraph 7** Austria has already criminalized crimes against humanity with appropriate penalties in Section 321a of the Austrian Criminal Code. We consider the requirement of appropriate penalties in the draft articles useful and would also like to state that existing national laws on the subject matter do not preclude states from engaging in a future convention.

Regarding the frequently discussed rules on the establishment of national jurisdiction in **Article 7**, we would like to underline that these rules are well-established bases of criminal jurisdiction under customary and treaty law, which can be found in many international conventions on combating international crimes.

In this context, it should be stressed that Article 7, as the ILC has pointed out in its commentary, only requires states to *establish* jurisdiction by adopting the necessary national legislation but *not to exercise* such jurisdiction unless the alleged perpetrator is present in the territory under the State's jurisdiction. Thus, in fact, the draft articles do *not* require States to *exercise* universal jurisdiction, since based on Articles 8, 9 and 10 States may decide only to exercise jurisdiction when the perpetrator is present in their territory, thus requiring a connection between the perpetrator and the forum State which is based on the territoriality principle.

We welcome the inclusion of the duty of investigation in **Article 8** similar to the obligation as featured for example in the 1984 Convention against Torture. A more ample obligation for a state to investigate outside the territory under its jurisdiction (in cases of a ship flying its flag or on board of an aircraft having the nationality of the State in which it is registered) could be discussed.

With regard to the principle of "Aut dedere aut judicare" in **Article 10** it remains our understanding that the reference to a competent international criminal court or tribunal also comprises hybrid courts or tribunals that combine both national and international elements. Should any court or international tribunal not have jurisdiction, the obligations of Article 10 remain binding on the State on whose territory the alleged offender is present.

Thank you.