

Statement by the Government of Japan
Resumed Sixth Committee Session on Crimes against Humanity
Cluster 3
United Nations General Assembly, Seventy-Eighth session
New York, 3 April 2024

As stated on Cluster 1, Japan considers that we would fulfil the purpose of the draft articles to prevent and punish “crimes against humanity” by making the content acceptable to more States. As for Cluster 3, Japan would like to make suggestions for fulfilling the purpose of the draft articles together while respecting each State’s national legal system.

In Japan, the acts that constitute crimes against humanity as articulated in the draft articles would basically be punishable in its existing national criminal law.

Furthermore, Japan is of the view that criminalization of crimes against humanity in the draft articles would not necessarily require each State to codify each crime in its national law as an independent offence defined by the same language as draft article 2. In this regard, we consider it would suffice for achieving the purpose of the draft articles to appropriately criminalize the acts that constitute crimes against humanity in each State’s national law.

Japan also considers that the measures which each State can take under draft article 6, paragraphs 1, 2 and 7 should include surrender of a perpetrator to the International Criminal Court to ensure his or her punishment, in order to achieve the purpose of the draft articles.

Japan understands that draft article 6, paragraph 3, does not require each State to establish the act as an independent offence. Japan has taken necessary measures to establish criminal responsibility of the commanders and other superiors as in complicity provisions under its national criminal law, which, we believe, suffices to meet the obligation of this paragraph. In addition, Japan is of the view that the language used in draft article 6, paragraph 3, should not “foreclose any State from adopting a more detailed standard in its national law, such as appears in Article 28 of the Rome Statute, should it wish to do so,” as pointed out by the International Law Commission in its commentary. It is preferable to clarify this point in the draft articles.

Japan establishes a statute of limitations for certain crimes and considers this is also the case for other States. In this regard, Japan believes that it is necessary to carefully consider whether to abolish the statute of limitations concerning all the offences which constitute crimes against humanity as defined in the draft articles.

Regarding draft article 7, paragraph 2, and article 10, Japan considers these obligations could be implemented by ensuring punishment under its existing national criminal law or surrender of a perpetrator to the International Criminal Court.

Regarding draft article 10, Japan understands that “the obligation [here] is to “submit the case to its competent authorities for the purpose of prosecution”, meaning to submit the matter to police and prosecutorial authorities, who may or may not decide to prosecute in accordance with relevant procedures and policies”, as the International Law Commission pointed out in its commentary, and that whether to prosecute an perpetrator is left to the reasonable discretion of prosecutorial authorities.

Japan deems it necessary to provide for the condition “the circumstances so warrant” under draft article 9, paragraph 1, in order to take the alleged offender into custody or take other legal measures to ensure his or her presence.

Regarding draft article 9, paragraph 3, which articulates that a State “shall immediately notify the States under draft article 7, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his or her detention”, it may not be possible for Japan to notify the State as referred here under its national law depending on the required information due to confidentiality of investigation, and believes that it is important to ensure flexibility in this respect.