

**Sixth Committee (Legal) — 78th session**

**Crimes Against Humanity**

**Portugal**

**Cluster 3: National measures (Articles 6, 7, 8, 9 and 10)**

Mr. Chair,

Since this is the first time I'm taking the floor, allow me to start by congratulating the co-facilitators and the Codification Division for enabling these consultations.

Mr. Chair,

Portugal aligns itself with the statement delivered by the European Union and wish to offer the following comments in our national capacity.

Our position on the draft articles under this cluster is known and has been restated again at last year's resumed session of the Sixth Committee. I'll try nevertheless to contextualize our position taking into consideration the different positions of the many delegations that have intervened during this session and also last year on this cluster.

Mr. Chair,

Articles 6 to 10 deal with measures to be adopted by states to ensure that crimes against humanity constitute criminal offences under national law and that those responsible for such crimes may be prosecuted without undue limitations.

These provisions are essential to avoid impunity and ensure accountability, and therefore make operational the draft articles on crimes against humanity that we are currently discussing. Portugal is, in general, satisfied with the drafting proposed by the ILC.

Mr. Chair,

In what concerns draft article 6, as others have already stated, we are also of the view that this is a key provision: States hold the main responsibility in the prevention and punishment of crimes against humanity. Ensuring that crimes against humanity are criminalized also through national criminal law is a logic and mandatory consequence of such responsibility.

Furthermore, the *jus cogens* character of the prohibition of crimes against humanity entails not only a negative obligation of not committing crimes against humanity, but also a positive obligation to adopt the necessary national legislation and other appropriate measures to enforce the prohibition of crimes against humanity. In addition, there this also entails an obligation to co-operate in good faith with other States in the prevention and prosecution of crimes against humanity.

Mr. Chair,

Regarding paragraph 5 of draft article 6, we would like to underline the importance of the provision referring that a person holding an official position does not exclude substantive criminal responsibility. At the outset, this is relevant in ensuring that senior officials - whether civil or military - do not have any type of immunity before their own national courts.

As to the immunity of foreign State officials under customary international law, we note that only the so-called troika enjoys such immunity and only during its term of office. The ongoing work of the ILC on this topic offers good guidance on this matter and we do not see any need to further develop paragraph 5.

Turning to paragraphs 6, on the statute of limitations, and 7, on ensuring adequate penalties, follow the same logic of ensuring accountability without undue restrictions. In any case, we would like to note that such penalties have to be in line with human rights law.

As is the case with other conventions on criminal matters, a convention on crimes against humanity does not need to prescribe specific penalties. Having said that, we would like to restate Portugal's strong and unconditional opposition to the application of death penalty in any circumstance. Portugal – as many other States – are barred from transferring a person suspected of having committed crimes against humanity to a State where he or she may be subject to the death penalty which would otherwise violate the human right to life enshrined in the European Convention on Human Rights and the Portuguese Constitution.

Mr. Chair,

We would like to again underline the importance of draft Article 8.

It is our view that States, particularly those in which territory the crimes have been committed, have *ab initio* priority over the ICC in the exercise of their jurisdiction over crimes against humanity. But their willingness to conduct a prompt, thorough and impartial investigation is an important test – if such willingness is not genuine than the ICC should act when it has jurisdiction to do so.

Mr. Chair,

We welcome the inclusion of the *aut dedere aut judicare* principle in draft article 10, which contributes to avoid any gap and ensure accountability.

It is our understanding that amnesties and pardons are not compatible with the obligation to held accountable those responsible for crimes against humanity.

Mr. Chair,

We are looking forward to continuing listening to the statements of other delegations and to advancing this process, that we hope will lead to the adoption of a convention on the prevention and punishment of crimes against humanity.

Thank you.