

 Permanent Mission
of Austria to the
United Nations in New York

**77th Session of the General Assembly
Sixth Committee**

Agenda item 78: Crimes Against Humanity

**Statement by H.E. Alexander Marschik
Permanent Representative
Permanent Mission of Austria to the United Nations**

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[Cluster 2]

Thank you, Mr./Madam Chair

My delegation fully aligns itself with the statement made by the European Union.

Before turning to the substance of Cluster 2 and the concrete articles, please allow me to make a few remarks on why we think a convention on crimes against humanity is needed *(as a reaction to the discussion yesterday)*.

And let me just very briefly give two reasons:

First, humanitarian reasons: It is our duty to ensure accountability for perpetrators of crimes against humanity and to ensure justice for victims. In the light of the horrible crimes we are witnessing in Ukraine, Myanmar, Syria and other parts of the world, a convention on the prevention and punishment of crimes against humanity has become more important than ever. While accountability should be addressed primarily under national jurisdiction and by enhancing international cooperation, an international convention will ensure that there are international norms complementing national procedures as a fall-back.

Second, systematic reasons: the proposed convention on crimes against humanity would join a series of multilateral treaties reflecting the efforts of the international community to ensure that those engaged in the most atrocious international crimes should not go unpunished. Codifying customary international law on the criminalization of widespread or systematic attacks directed against any civilian population would complement the Genocide Convention of 1948 and the Geneva Conventions of 1949. Only crimes against

humanity are currently not governed by a specific convention. A convention on this topic would fill an existing gap in international treaty law.

For these reasons, Austria, like many other states, supports the early convening of a diplomatic conference to finalize and adopt an international convention on the basis of the “Draft articles on prevention and punishment of crimes against humanity”, as recommended by the International Law Commission.

Let me now turn to the substance of Cluster 2:

The definition of crimes against humanity in **Article 2** of the proposed convention codifies the current status of this rule under customary international law. Thus, from a legal point of view, the definition is not “based” on Article 7 of the Rome Statute of the International Criminal Court as a matter of treaty law. It is evident that the Rome Statute and the proposed Convention are two individual and separate legal instruments with a different purpose and possibly different parties. The only thing they have in common is the definition of crimes against humanity under customary international law. This is important to avoid fragmentation and to ensure consistency in the international legal system.

Although prior conventions, such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, have not expressly provided that States shall not commit the acts in question in those conventions, we see merit in explicitly mentioning the obligation of states “not to engage in acts that constitute crimes against humanity” as in **Article 3 paragraph 1**. This obligation is two-folded and applies to state organs as well as persons acting on the instructions or under the direction or control of the state. We also welcome the addition of the explicit obligation to prevent crimes against humanity in **Art. 3 paragraph 2** as it is also stipulated in the Genocide Convention.

The obligation of prevention in **Article 4** includes “effective legislative, administrative, judicial or other appropriate preventive measures”, which was inspired by the wording of the Convention against Torture. Since torture is one of the acts listed in the draft definition of crimes against humanity, a similar approach on the prevention of crimes against humanity is only consequential. At the same time the explicit requirement of preventive measures to be “in conformity with international law” is in line with ICJ jurisdiction and may alleviate concerns of certain states.

Mr./Madam Chair

I would like to close by expressing the sincere hope of my delegation that the discussions during the resumed session will help to dispel existing concerns and possible misunderstandings among various delegations. We invite all delegations to keep constructively engaging in the debate in order to make meaningful progress towards the goal of adopting the future convention at a diplomatic conference, [that might be convened in Vienna], which would be an important step to strengthen the rule of law at the international level.

Thank you.