



UN GENERAL ASSEMBLY SIXTH COMMITTEE: Resumption of the Seventy-Seventh Session

Crimes against humanity: Cluster 2

11 April 2023

Statement by Australia

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Thank you Madam Chair,

Draft article 2: Definition of crimes against humanity

Australia is generally supportive of the definition of crimes against humanity set out in the International Law Commission's (ILC) draft article 2.

We acknowledge that not all UN member States are party to the Rome Statute of the International Criminal Court.

During this session, we are interested to continue to hear from those that are not a party, to learn more about any specific concerns with the definition currently reflected in draft article 2 and proposed amendments in that regard.



Nonetheless, we are also mindful of the benefits of drawing from the definition in the Rome Statute, insofar as it has such broad and cross-regional acceptance, and subsequent implementation into national laws.

We must also balance the need to prevent unnecessary fragmentation of international law with the imperative to ensure the definition remains fit for purpose.

In this context, Australia believes the ILC reached a balanced outcome in draft article 2, making only minor amendments to the Rome Statute definition to suit a different context.

Specifically, we support the ILC's decision to remove the definition of 'gender'.

This ensures the term can be applied to account for an evolving understanding of its meaning, in the same way that other important terms, such as 'religious' and 'racial', were left undefined in the Rome Statute and remain undefined in draft article 2.

Australia also supports the inclusion of a 'without prejudice' clause in paragraph 3 of draft article 2.

It is a valuable addition to ensure any future convention would complement and support existing or developing rules of international law.



As foreshadowed during Cluster 1, Australia is giving consideration to how we could better integrate gender equality as a cross-cutting issue throughout the draft articles. We take note of some suggestions from several other delegations in this regard today.

Overall, Australia considers draft article 2 to be a valuable basis for States' consideration of the definition of crimes against humanity.

While remaining cautious of any *significant* changes to the definition in draft article 2, we are open to considering adjustments that would ensure any future convention remains fit for purpose.

Draft article 3: General obligations

Madam Chair,

Turning now to draft article 3, Australia supports its characterisation of the general obligations of States. It is consistent with the principle that it is the primary responsibility of each territorial State to prevent and punish serious international crimes that occur within its jurisdiction.

We further support the confirmation, reflected in paragraph 2 of draft article 3, that crimes against humanity can be committed in both peacetime and armed conflict, where such acts are committed as part of a widespread or systematic attack directed against any civilian population.



Draft article 4: Obligation of prevention

Madam Chair,

Australia also welcomes the ILC's approach to draft article 4.

We appreciate that it provides high-level and non-exhaustive guidance on the scope of States' obligation to prevent crimes against humanity, while maintaining a level of flexibility for States when implementing preventative measures that are most appropriate for their national systems.

It also makes clear that all preventive measures and interstate cooperation must be in conformity with international law.

We've heard some delegations today suggest that draft article 4 should be expanded for added clarity or precision, and we remain open to hearing specific ideas in that regard.

Finally, we wish to take this opportunity to make an observation regarding the territorial scope of States' obligations under the draft articles, which are defined in draft article 4 (and several others) as extending to 'any territory under [the State Party's] jurisdiction'.



Australia considers that international obligations are primarily territorial in nature, and that a high degree of control over territory is required for territory to be considered under a State's jurisdiction.

We welcome the confirmation by the Special Rapporteur in his Fourth Report that he shares this view.

Australia suggests that any future convention on crimes against humanity should be explicit on this point.

Thank you.