

STATEMENT OF
THE DELEGATION OF THE REPUBLIC OF INDONESIA
ON THE SIXTH COMMITTEE RESUMED SESSION
TO CONTINUE ITS CONSIDERATION OF AGENDA ITEM 78
ON CRIMES AGAINST HUMANITY

THEMATIC DEBATE 2
– DRAFT ARTICLES 2, 3, AND 4 –
OF THE INTERNATIONAL LAW COMMISSION ON DRAFT ARTICLES
ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST HUMANITY

Tuesday, 11 April 2023

Thank you, Chair,

1. Allow me to make some remarks about the ILC Draft Articles, focusing on the second thematic cluster, namely Draft Articles 2, 3, and 4.
2. **First, on Draft Article 2.**
3. Draft Article 2 is essential. It includes the definition of "crimes against humanity," comprised of a list of the underlying prohibited acts that constitute crimes against humanity, and a glossary of terms used within the definition.
4. The ILC took the first two paragraphs of Draft Article 2 almost verbatim from the first two paragraphs of Article 7 of the Rome Statute.
5. The additional "without prejudice clause" in Paragraph 3 of Draft Article 2 provides States, particularly Non-State Parties to the Rome Statute, the flexibility to use either the customary international law definition or their national law definition of crimes against humanity.
6. It is common knowledge that the definition of "crimes against humanity" in international law treaties has evolved since the Nuremberg Charter of 1945 to the current definition reflected in Article 7 of the Rome Statute as of mid-2019.
7. The evolving jurisprudence of the International Criminal Courts and Tribunals will continue to inform and clarify national authorities, including national courts, on the meaning of "crime against humanity" definitions, thereby promoting harmonized national approaches to international law.
8. As for Indonesia, the substance of the definition and the underlying prohibited acts for crimes against humanity is already in our national law, both in the Indonesian 2023 Penal Code and Law No. 26 the Year 2000 on Human Rights Court.

9. At this juncture, there seems a merit for this forum to consider further the concerns expressed by several member states regarding Draft Article 2 Paragraph 1(k) and to discuss the nature of the list of offenses within the definition of "crimes against humanity," whether we are going to adopt an open or a restrictive list of types of crimes with similar characteristics as "acts committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack."

10. **Now, allow me to proceed to Draft Article 4.**

11. Draft Article 4, in essence, governs the international obligations of State to prevent crimes against humanity. The obligation of prevention can be found in treaty practices, including multilateral treaties.

12. In this regard, the International Court of Justice, in its Judgment on the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina vs. Serbia and Montenegro Case), stated that when engaging in measures of prevention, it is clear that every State may only act within limits permitted by international law.

13. It is true that States must take proactive steps to prevent the occurrence of the crime through effective legislative, administrative, or judicial measures.

14. Nevertheless, My Delegation finds the last phrase of Draft Article 4(a), "**or other appropriate preventive measures**," very outstretched, unclear, and imposes States with excessive obligation to prevent.

15. Such a phrase also leaves wide-open multiple interpretations because it is unclear how broadly "**other appropriate preventive measures**" applies in practice.

16. This is important because if this Draft Articles one day become an international law instrument, then the failure to exercise "**other appropriate preventive measures**" may result into the question of state responsibility for internationally wrongful acts, which in this case, any occurrence of crimes against humanity.

17. Therefore, clarity of scope and understanding of this phrase are important to ensure legal certainty.

18. This concludes my Delegation's statement for this cluster.

19. **Thank you.**