



PERMANENT MISSION OF ROMANIA
TO THE UNITED NATIONS

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The 77th Session of the General Assembly

Resumed Session of the Sixth Committee

Agenda item 78 “Crimes against humanity”

Cluster II - Definition and general obligations (Articles 2, 3 and 4)

**Statement delivered by Ms. Alis Lungu, Legal Adviser
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New York, 11 April 2023

Madam Chair,

Romania fully aligns with the statement delivered on behalf of the European Union and its Member States and would like to add the following remarks in its national capacity.

As agreed for the purposes of our substantive discussions, we will tackle the questions falling under Cluster II, namely the definition of crimes against humanity and general obligations (Articles 2, 3 and 4).

Draft article 2

Romania welcomes the approach of the Commission not to depart from the similar provision of the Rome Statute of the International Criminal Court defining crimes against humanity, for the purposes of ensuring consistency and preventing normative fragmentation.

For the 123 States Parties to the Rome Statute, including Romania, the current drafting avoids contradictions and ensures respect for and consistency with existing obligations.

But beyond its connection with the Rome Statute, the drafting reflects a solid contemporary definition of crimes against humanity, which is widely endorsed and accepted. The current definition is the product of a historical evolution, as detailed in the ILC commentaries. We are cognizant that there might be other elements that will need to be updated to reflect the evolutions since the negotiations of the Rome Statute and we are interested in other views on this topic. At the same time, it is critical to minimize any risks to the stability of the definition and to avoid undermining critical elements of established international criminal law.

Considering the explanations provided in the commentaries, we endorse the decision of the Commission of not including the definition of gender (article 7, paragraph 3 of the Rome Statute) in the present draft articles. While the term is left undefined in the draft articles, we note that the same applies for various other terms used in draft article 2, paragraph 1 (h).

We also welcome paragraph 3 of draft article 2, underlying the flexibility for States to provide in their national legislation a definition going beyond the one contained in the draft article – however not in the sense of limiting it. This also applies in reference to other international instruments and customary international law, allowing for a flexible approach.

Draft article 3

We share the view on the general obligation “*not to engage in acts that constitute crimes against humanity*” entailing two aspects: an obligation for the State not to commit the acts through its own organs or persons within its control and an obligation not to aid or assist another State in the commission of an internationally wrongful act.

We welcome the clarification provided in paragraph 2, according to which crimes against humanity are offences under international law, irrespective of being committed in an armed conflict or during peacetime. The qualification of a crime as “*crime against humanity*” should indeed not be conditional upon the existence of an armed conflict, since the conduct constituting that type of crime does occur in times of peace as well.

We also support the inclusion of a clause stating that no exceptional circumstances whatsoever may be invoked as a justification of crimes against humanity.

Draft article 4

Draft Article 4 is an important pillar of the text, as it builds upon the obligation to prevent the commission of crimes against humanity.

The preventive objective could be attained in two ways: internally, through specific measures (effective legislative, administrative, judicial or other appropriate preventive measures in any territory under a State’s jurisdiction) and internationally, through cooperation with other international actors.

We note that similar provisions related to the obligation to take preventive measures are included in a number of multilateral treaties addressing crimes since the 1960s, listed in detail in the commentaries. Therefore, the ILC’s approach is very much consistent with existing treaty practice. We also take note of the fact that the Commission avoided being overly prescriptive in the drafting of this provision, leaving a significant margin of appreciation to States on the precise measures to effectively prevent crimes against humanity.

We look forward to hearing other delegations’ views on these three important draft articles.

Thank you!