



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

Crimes against humanity: Cluster 4

12 April 2023

Statement by Australia

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Thank you Mr Chair,

The draft articles in Cluster 4 provide an important framework for inter-state cooperation to assist States in assuming their primary responsibility to investigate and prosecute crimes against humanity

Australia particularly appreciates the detailed elaboration of provisions to underpin extradition proceedings and mutual legal assistance requests relating to such crimes.

Draft article 13: Extradition

In relation to draft article 13 on extradition, Australia considers that the primary responsibility for investigating and prosecuting serious international crimes rests with the State in whose territory the alleged criminal conduct occurred, or the State of nationality of the accused.



In our view, States with territorial jurisdiction are often best placed to achieve justice, given their access to evidence, witnesses and victims.

States with nationality jurisdiction also have significant interests in securing accountability with respect to their nationals.

In recognition of these interests, Australia suggests that paragraph 12 would benefit from requiring States to give due consideration, not only to an extradition request from the State in the territory under whose jurisdiction the alleged offence occurred, but also from *the State of nationality of the accused*.

Draft article 14: Mutual legal assistance, and Annex

Turning to draft article 14 and the annex on mutual legal assistance, Australia supports the approach taken by the International Law Commission (ILC) to these provisions.

We recognise that some States would prefer a more succinct approach. However, we consider there is particular utility to the present level of specificity in situations where no mutual legal assistance treaty exists between the requesting and requested States.

We also note that the framework for international crime cooperation envisaged in the draft articles would be complementary to any new



Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes, widely known as the MLA initiative.

Draft article 15: Settlement of disputes

Mr Chair,

Australia recognises that, in the draft articles, the ILC sought to present a careful balance that would be acceptable to the widest number of States possible.

To that end, we understand the rationale for the ILC's inclusion, in paragraphs 3 and 4 of draft article 15 on settlement of disputes, of a means through which States Parties could effectively opt out from the jurisdiction of the International Court of Justice.

We acknowledge this provides States with a starting point for consideration, notwithstanding other treaties addressing serious international crimes of a comparable gravity take a different approach, including the *Convention on the Prevention and Punishment of the Crime of Genocide* and the *Convention on the Suppression and Punishment of the Crime of Apartheid*.

At a minimum, we consider draft article 15 should limit the ability for States to make a declaration under paragraph 3 only upon ratification or accession.



Capacity development

Mr Chair,

In this cluster on international measures, Australia wishes to take the opportunity to mention a key issue that is missing from the draft articles, namely, capacity development.

We have listened carefully to views of some delegations that feel more needs to be done to strengthen national investigative, prosecutorial and judicial capabilities, as the most effective means of preventing and punishing crimes against humanity.

Australia is giving further consideration to how to ensure the draft articles could play a catalytic role in facilitating greater international cooperation in that regard, which would, in turn, strengthen the effectiveness and inclusivity of any future convention.

Thank you.