

ISRAEL

SIXTH COMMITTEE

CHECK AGAINST DELIVERY

Statement by
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Ministry of Foreign Affairs

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Thank you Mr. Chairman,

The Government of Israel would like to express its sincere appreciation to the International Law Commission and the Special Rapporteur, Mr. Sean Murphy, for their valuable work related to the codification of “**Crimes against Humanity**”.

Israel welcomed this process from the outset since it has consistently been committed to international criminal justice and to the prevention and punishment of international crimes, including crimes against humanity. Israel was one of the first nations to join the Convention on the Prevention and Punishment of the Crime of Genocide and to adopt domestic legislation to that effect.

Furthermore, following a recommendation made by a Public Commission of Inquiry in February 2013 established by the Israeli government, Israel is considering the adoption of domestic legislation that would explicitly address the prohibition of crimes against humanity, in accordance with customary international law. The proposed bill is currently being drafted based on the outcome of a large-scale and comprehensive study conducted by the relevant professional Israeli agencies.

Mr. Chairmain,

Israel believes that effective codification of customary crimes against humanity would benefit the international community as a whole. However, the process of codification raises certain questions which must be addressed. For example, Israel once again urges states to be cautious when considering the establishment of mechanisms for the enforcement of or adherence to the proposed treaty. These mechanisms could potentially be abused by states and other actors in order to advance political goals, rather than be utilized as a means to protect the rights of victims. In addition, when designing such mechanisms, it would be appropriate to take into consideration the multiple enforcement mechanisms already in place, in order to avoid duplication of efforts and encourage synergy with existing mechanisms.

The state of Israel believes in the importance of achieving universality in accession and adherence to a future treaty on crimes against humanity. It is with this vital goal in mind that it

stresses the importance of remaining in line with customary international law when codifying these crimes and their definitions. Creating a treaty which will allow for flexibility in States' implementation is conducive to this goal as well. Accordingly, the approach reflected in the report of the Special Rapporteur (in para. 323 to his report) with respect to following general international law applicable to reservations is welcome, as is the approach reflected in the draft articles regarding flexibility with respect to binding dispute settlement mechanisms and opt-out provisions.

With respect to paragraph 2 of draft article 13, which proposes excluding the "political offence" exception as grounds for not proceeding with an extradition request, we believe that this approach is in conflict with current extradition practice and would caution against a blanket exclusion of the "political offence" exception. Instead we recommend allowing states' to make an evaluation on a case-by-case basis.

Along these lines, with respect to domestic criminal measures and other issues of extradition addressed by the draft articles, Israel wishes to stress that any consideration of these articles should take into account concerns raised by States in the context of universal jurisdiction, including the discussion of appropriate criteria and safeguards in applying such mechanisms.

Mr. Chairman,

Israel highly values the particular attention given in the ILC's commentary to crimes against humanity committed by non-State actors. Israel strongly believes that any codification of "crimes against humanity" should cover crimes committed by states and non-state actors alike, due to the increased involvement of non-State actors in the commission of crimes against humanity.

We will continue to study the ILC's draft articles and commentary on this topic and would be honored to contribute and share comments and observations based on the experience gained during Israel's efforts to adopt domestic legislation addressing the prohibition of crimes against humanity under customary international law.

Mr. Chairman,

Now we would like to address the topic of “**Provisional Application of Treaties**”. Israel commends the Special Rapporteur, Mr. Juan Manuel Gómez-Robledo, and the International Law Commission on their valuable work on the Draft Guidelines.

As we have stated in the past, Israel’s practice does not generally permit the provisional application of treaties. However, there are exceptional circumstances in which it may be allowed, including cases in which the internal requirements for the approval of the treaty are lengthy, or where there is an urgent need for the application of the treaty that stems from political or economic considerations. Even in these cases, such a step in Israel is subject to numerous procedural conditions, including completion of necessary internal legal procedures for the entry of the treaty into force, and the adoption of a specific decision by the Government of the State of Israel approving the provisional application of the treaty in question.

This past year, Israel undertook a review of its practice on provisional treaty application. During this review, Israel identified an occasional need to apply Air Services Agreements between Israel and other countries prior to their signature and entry into force. This is, as a rule, due to the lengthy internal procedures in some countries with which Israel has Air Services Agreements, and the need to establish and operate regular air services between the respective countries in a timely manner. In order to implement such application, Israel decided to develop a unique procedure, which allows for the mutual administrative implementation of Air Services Agreements prior to their signature and entry into force. However, Israel takes the view that this kind of early application is not considered provisional application per se, as provided in Article 25 of the Vienna Convention on the Law of Treaties; or at the very least it is not considered by the Government of Israel to be a classic example of provisional application.

Under this procedure, both sides must first initial the Air Services Agreement. Subsequently, the Government of the State of Israel must permit Israel to establish and operate air services between the relevant countries, in accordance with the provisions of the initialed draft agreement. Following the Government's approval, the provisional application of the agreement commences on the date upon which both countries notify each other of the completion of their respective internal procedures necessary for such application. As these circumstances were identified by Israel as those that require a special procedure, we would be greatly interested in learning from

other Member States about their practice regarding similar situations. In addition, we would very much like to hear whether other fields have been identified by Member States as requiring unique procedures similar to those that have been introduced by Israel.

Mr. Chairman,

Regarding the Draft Guidelines provisionally adopted by the Drafting Committee, Israel supports the development of these Guidelines and commends the efforts of the Drafting Committee on this matter. However we are concerned with the wording of Draft Guideline 4, titled "Form of Agreement". It seems that the text may be interpreted as allowing other States or entities to initiate the provisional application of a treaty - which may include obligations - without the consent of the relevant States. We would emphasize the importance of clarifying that a treaty may be provisionally applied only subject to the consent of all States which are affected by such provisional application.

Thank you, Mr. Chairman.