

Translated from Arabic

Observations and comments of the Kingdom of Saudi Arabia regarding the draft articles on prevention and punishment of crimes against humanity

First, article 1 reads: “The present draft articles shall apply to the prevention and punishment of crimes against humanity”. Given that the objective of the draft articles is to prevent and punish crimes against humanity, the current wording is not appropriate in the context of the text. It would be more appropriate for article 1 to be formulated in one of the following two ways: (a) “The present draft articles apply to crimes against humanity” and/or (b) “The aim of the present draft articles is the prevention and punishment of crimes against humanity”. It should be noted that the title of the article would need to be changed to “Objective” if the latter formulation is used.

Second, article 1 (k) reads: “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”. This paragraph covers a variety of acts that are difficult to specify and raise the possibility that any of those acts could be characterized as a crime against humanity, notwithstanding the fact that such crimes had been defined in the preceding paragraphs. This opens the door to the uncontrolled expansion of the acts in respect of which the draft articles could be applied.

Third, article 3, paragraph 2, reads: “Each State undertakes to prevent and to punish crimes against humanity, which are crimes under international law...”. There was no need to include the phrase “which are crimes under international law” in that paragraph, because crimes against humanity had already been defined and identified in the draft articles.

Fourth, paragraph 3 of article 6 enshrined a new legal principle that conflicts with the established rules of customary international law concerning the immunities of Heads of State and State officials.

Fifth, with regard to paragraph 2 of article 7 and articles 9 and 10, we note that their provisions consolidate the application of the principle of universal criminal jurisdiction, which is applied unevenly by States. In order not to expand the principle in a manner that would result in its arbitrary application for political purposes and would create tension in international relations, those provisions should apply only where certain criteria are met.

- There should be decisive evidence that the individual has committed one of the crimes listed in the articles.
- The State should first endeavour to extradite the person to his or her country of nationality for prosecution, transmitting the decisive evidence at its disposal.
- If the individual has not already been prosecuted in his or her State of origin on the basis of its national laws, and that State has declined to receive and prosecute the individual.
- If the act referred to in the draft articles is not criminalized in the domestic law of the State of origin, and if the State of origin is not a party to the future convention.

Sixth, with regard to paragraph 7 of article 6 on appropriate penalties, the Kingdom emphasizes that determination of the appropriate penalty is the sovereign right of States in accordance with their domestic regulations and laws.

Seventh, with regard to the reference in the preamble to the Rome Statute of the International Criminal Court (the Statute), the Kingdom reaffirms the importance of not making reference to the Statute because many States have not acceded to it. As a result, many States might not support the draft articles.

In conclusion, the Kingdom reaffirms its belief in the need to prevent crimes against humanity and prevent impunity. However, any proposed convention or draft articles in that regard must contain provisions agreed upon by the international community as a whole, and they should not contain anything that affects the sovereignty of States or relations between them in a manner that might be harmful to international peace and security.
