



Resumed 78th session of the United Nations General Assembly Sixth Committee: Agenda item 80 crimes against humanity – Cluster I (introductory provisions)

1 April 2024

Statement by Ms Alexandra Hutchison, Legal Adviser and First Secretary, Permanent Mission of Australia to the United Nations

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Thank you Chair,

As this is the first time my delegation is taking the floor at this resumed session, let me take the opportunity to commend you, alongside all members of the Bureau and the co-facilitators of this resumed session, on your respective appointments and assure you of Australia's full support.

Australia welcomes the progress the Sixth Committee has already made on prevention and punishment of crimes against humanity through the first resumed session examining the International Law Commission's (ILC) draft articles on the topic in April 2023, as well as the submission of written comments and observations in December 2023.



We look forward to building on this momentum over the coming weeks and months, reflecting our shared commitment to combat impunity for these heinous crimes.

And we must not lose sight of the fact that, as almost all statements today have recognised, we are talking about acts that are among the most egregious crimes of international concern.

Crimes that, by the widespread, systematic and violent manner of their commission, undermine and threaten all three pillars of the United Nations (UN) Charter.

In that context, Australia remains convinced that it is time to close the gap in the international legal framework by commencing negotiations on a new convention on crimes against humanity.

Chair,



I will turn now to the draft articles included in this Cluster I on the introductory provisions.

Preamble

Australia considers that the preamble provides an important conceptual framework for the draft articles and establishes their main purposes.

We wish to emphasise some elements of the preamble to which Australia attached particular importance.

First, we welcome the preamble's emphasis on the primary responsibility of States to investigate and prosecute crimes against humanity, as well as the importance of the dual objectives of prevention and punishment of such crimes.



These elements underpin the precise need for a convention on crimes against humanity: to empower States and equip them with the tools needed – through the development of a harmonised legal framework and the promotion of international cooperation – so that national authorities can fill the impunity gap that currently exists.

Second, as with many other delegations today, Australia considers draft preambular paragraph 4 on the *jus cogens* status of the prohibition of crimes against humanity to be an important inclusion.

It reflects that the international community accepts and recognises the prohibition of crimes against humanity as a norm of international law from which no derogation is permitted.

We find the reasoning in the ILC commentaries in this regard persuasive, particularly with respect to the breadth of national, regional and international courts and tribunals – including the International Court of Justice – that have found the prohibition of crimes against humanity to have *jus cogens* status.



Chair,

Australia acknowledges there are some different views over the reference in draft preambular paragraph 7 to the definition of crimes against humanity under the Rome Statute of the International Criminal Court (ICC).

Australia is a steadfast supporter of the ICC, and we agree with Jordan that the draft articles do not, in any way, somehow indirectly bind States not party to the ICC to obligations under the Rome Statute.

However, we recognise that the draft preambular paragraph 7, as currently drafted, may deter some States from joining a future convention on crimes against humanity. In this context, we would be supportive of the proposal made by Canada in its written submission to consider simply 'noting' the Rome Statute.

Chair,



Australia recognises that any preamble will ultimately need to reflect the substantive content of any future treaty text. To that end, we are open to considering additional or alternative preambular text.

For example, there may be value in reaffirming all the purposes and principles of the UN Charter in the preamble, as has been suggested by several States in their written submissions and today's oral statements.

We also consider there may be an opportunity to build upon the existing preamble to reaffirm rights of Indigenous Peoples.

Draft article 1

Chair,

Australia also supports the scope of the draft articles, as set out in draft article 1.



We consider that taken together, the preamble and draft article 1 set the right tone and balance from the outset to ensure the draft articles provide a strong basis for future negotiations on a convention on prevention and punishment of crimes against humanity.

The healthy engagement on the draft articles already evident to date in this Committee only strengthens our confidence that differences in position can be resolved through further constructive engagement in this exchange of views and, ultimately, through diplomatic negotiations.

Thank you.