

## INDIA'S COMMENTS CONCERNING DRAFT ARTICLES ON PREVENTION AND PUNISHMENT OF CRIMES AGAINST HUMANITY AS RECOMMENDED BY THE INTERNATIONAL LAW COMMISSION.

As we deliberate on the draft articles proposed by the International Law Commission (ILC) on prevention and punishment of crimes against humanity, our endeavor should be consistent with the Charter of the United Nations and the universally recognized principles of international law.

While discussing the draft articles, it is important to take in account prevailing divergent legal systems with due respect to the principle of sovereign equality of states. This aspect is critical to the success of any Convention. Any attempt to simply transposing already existing legal regimes into a draft convention, will be a futile exercise.

The draft articles are inspired by the Rome Statute of the International Criminal Court and the Convention on the Prevention and Punishment of the Crime of Genocide.

As we all aware, several countries in Africa and Asia, including India, are not parties to the Rome Statute. Furthermore, 43 Member States are neither signatories nor parties to Genocide Convention.

Draft Articles are not new. Therefore, a new convention emanating therefrom, may not enjoy universal acceptance.

We are of the view that there should be no attempt to impose legal theories or definitions derived from other international agreements that do not enjoy universal acceptance.

Our understanding is that those Member States that have not subscribed to the Rome Statute, have extant national legislation in place to deal with such offenses. The acquittals in recent years have also cast a shadow on the credibility of the ICC. These developments appear to substantiate the view that when cases are referred to ICC primarily for political reasons, the ICC mechanism may not serve the larger purpose of justice.

Even otherwise, the fragmentation of views on the draft Articles implies a lack of consensus to address all its aspects unanimously. Attempts to incorporate definitions emanating from non-universal instruments, let alone national laws and practices emanating from a particular legal principle, has hindered the process by preventing the member States from further reaching consensus.

Furthermore, a selective application of such a prospective convention, is a matter concern for States who are not parties to conventions including Rome Statute.

The objective of international law is upholding the age-old universal value of humanity. Thus, any serious violations of international law are contrary to the spirit and aims of the United Nations. The Member States have the responsibility and obligation to ensure justice and accountability for gravest violations of human rights and mass atrocities, in line with their national legislations.

We believe that a clear jurisdictional linkage principle should be established for exercise of jurisdiction by States over crimes committed by their nationals. Our view is based on the fundamental principles of international law that States have the primary sovereign prerogative to exercise jurisdiction through their national courts over crimes including crimes against humanity, that have been committed either in their territory or by their nationals. The goal of preventing crimes against humanity and other core crimes, would not be necessarily advanced by adoption of an additional treaty instrument.

My delegation is not in support of efforts that result in duplication of existing international legal mechanisms.

With regard to the specific provisions of the draft articles in cluster 1, we wish to make the following comments:

#### I. Preamble

The foundational status of the principles of sovereign equality and territorial integrity of States and non-intervention in domestic affairs should be highlighted in the Preamble as in the case of other Conventions such as the United Nations Convention against Transnational Organized Crime and the International Convention for the Suppression of the Financing of Terrorism. Such conventions enjoy greater universality than those cited in the commentary to the preamble.

Furthermore, only a rule accepted and recognized by the international community of States as a whole, would constitute a “jus cogens” norm. Therefore, reference to the studies and judgments cited in the commentary to the fourth paragraph of the preamble, is insufficient to substantiate the prohibition of crimes against humanity as a “jus cogens” norm and should not be a part of the Preamble.