

STATEMENT OF
THE DELEGATION OF THE REPUBLIC OF INDONESIA
ON THE SECOND RESUMED SESSION OF THE SIXTH COMMITTEE
TO CONTINUE ITS CONSIDERATION OF AGENDA ITEM 80
ON CRIMES AGAINST HUMANITY

Thematic Debate 2:
Draft Articles 2, 3, and 4
of the International Law Commission Draft Articles
on the Prevention and Punishment of Crimes against Humanity

Monday, 1 April 2024

Thank you, Mr. Chair,

Allow me to take this opportunity to convey our observations as follows.

FIRST, Indonesia believes that **Draft Article 3, Paragraph 1**, requires further refinement.

The current formulation of Draft Article 3, Paragraph 1, lacks several crucial dimensions, addressing both the substance issue and the critical issue of **responsibility dimensions**.

From the commentary, we understand that the general obligation “**not to engage in acts**” as outlines in Paragraph 1 of Draft Article 3 includes two components.

First, States have an obligation “**not to commit such acts through their own organs, or persons over whom they have such firm control that their conduct is attributable to the State concerned under international law**”.

A breach of the obligation not to commit such acts directly engages the responsibility of the State if the conduct at issue is attributable to the State pursuant to the rules on the responsibility of States for internationally wrongful acts.

Second, States have obligations under international law “**not to aid or assist, or to direct, control or coerce, another State in the commission of an internationally wrongful act**.”

While my delegation agrees with the rationale proposed by the commentary, we are **not satisfied with the drafting** of paragraph 1 of Draft Article 3.

We believe that the general obligations under Draft Article 3 paragraph 1 should provide **precision and clarity**.

They must **specify and stipulate in an unequivocal manner** the two types of obligations rather than referring to a generic statement of norm.

Moreover, relying on such generic statement of norm in the current paragraph 1 would risk missing the opportunity to establish the following:

- a. The **State's responsibility** for wrongfully engaging, aiding, or abetting in the commission of crimes against humanity; and
- b. The **individual criminal responsibility** of the officials who are directing or orchestrating the execution of such unlawful acts.

Draft Article 3, Paragraph 1, reminds my delegation of the **plight of Palestinian people**.

My Delegation is closely following how the ICJ will deliberate and decide on the issue of aiding and abetting of the crimes of genocide against the Palestinian people.

SECOND, regarding **Paragraph 2 of Draft Article 3**.

My delegation believes that the reference to "***whether or not committed in time of armed conflict***" might be **unnecessary**.

The commentary of Paragraph 2 of Draft Article 3 explains that this reference aims to clarify that the focus is on "***individual criminal responsibility***," as in contrast to state's responsibility under Paragraph 1 of Draft Article 3.

It is a well-established fact and legal principle that **crimes against humanity need not be associated with armed conflict**.

Therefore, this reference does not add practical or normative value.

Without this reference, it is widely recognized that crimes against humanity are not necessarily linked to armed conflict.

Mr. Chair,

LASTLY, and this will be my delegation's last observation for this cluster...my delegation believes it is necessary **to include a provision relating to respect for the principles of sovereignty and non-interference before addressing general obligations**.

This provision should not be misconstrued as a license to commit crimes against humanity.

In fact, my delegation emphasizes that the primary aim of this Draft Article is to strengthen international cooperation among states parties.

An additional provision concerning respect for the principles of sovereignty and non-interference would be crucial to ensure that domestic jurisdiction and the principle of complementarity are upheld and respected.

I thank you.
