

**Interventions by Pakistan on the draft International Law
Commission’s draft Articles on Crimes Against Humanity (Sixth
Committee)**

2nd Resumed Session 1st April – 5 April and 11 April 2024

Cluster wise Comments

Cluster 1: Introductory Provisions and Article 1

Mr. Chair,

Pakistan appreciates the International Law Commission (ILC) for its work on the draft Articles on Crimes Against Humanity and the Secretariat for holding the 2nd Resumed Session to discuss these draft articles.

2. Today, as we convene to deliberate upon the content of these draft articles on Crimes Against Humanity, it is imperative to acknowledge the ongoing atrocities in Palestine, despite the recent ceasefire resolution adopted by the Security Council. Such flagrant violations of international law represent the utmost disregard for the principles upheld by the United Nations Charter and international law. The situation in Palestine, where crimes against humanity continue unabated, must not be overlooked in our deliberations.

3. In reviewing the comments provided by fellow Member States, Pakistan recognizes the persisting disagreements on the overall approach taken by these draft articles and its content. It is important that we refrain from hastening towards the formulation of a treaty based on these Articles without thoroughly addressing these discrepancies. Specifically, in the **preamble**, as it draws inspiration from the Rome Statute of the International Criminal Court, it is essential to note that the Rome Statute lacks universal acceptance. Therefore, Pakistan cannot support direct references to it, particularly concerning the definition of crimes against humanity in Article 7. Such references could undermine the universal acceptance of any future convention. With respect to paragraph 8 the preamble, we express full support for the reference to primary responsibility of the State to prevent and punish crimes against humanity. However, it is crucial to emphasize that the duty of the State to exercise criminal jurisdiction should be confined to cases where a clear nexus exists between the forum State and the crime. This underscores the necessity of expressly incorporating the principle of complementarity into the text.

4. In **Article 1**, we support the suggestions made by some Member States during the 1st resumed session to add the words “by States” after the words “prevention and punishment”, in order to add legal precision to the provision and to emphasize that the draft articles were concerned with horizontal cooperation between States. We further support adding references to capacity-

building and the transfer of proceedings to an international jurisdiction in accordance with the complementarity principle and a clear reference to the non-retroactivity of the draft articles, in line with general international law.

I thank you, Mr. Chair.

Cluster 2. Definition and General Provisions (Articles 2,3 & 4)

Mr. Chair,

My delegation expresses its concerns regarding **Article 2**, as raised by some Member States. Given that a significant number of States were not parties to the Rome Statute, the definition of crimes against humanity, derived from the Rome Statute, presents certain problematic aspects due to its broad scope.

2. The need for specific terms and their definitions such as "forced pregnancy," "enslavement," "persecution," and "enforced disappearance of persons," warrant further careful examination and study to ensure alignment with existing treaties and recent jurisprudence.

3. In **Article 4, paragraph (a)**, my delegation reiterates that the responsibility for preventing international crimes falls within the national jurisdiction of States. We emphasize that the inclusion of broad terminology such as "or other appropriate preventive measures" may impose an overly extensive obligation on States. Therefore, it is imperative that we engage in thorough discussion regarding whether this language should be retained in the text or not.

I thank you, Mr. Chair.

Cluster 3 National Measures (Articles 6,7,8,9 and 10)

Mr. Chair,

My delegation believes that penalizing crimes against humanity is undeniably vital in upholding justice and ensuring accountability for the most egregious violations of human rights. However, it is imperative to approach this matter with sensitivity and understanding, acknowledging the diverse legislative frameworks of different nations.

2. In **Article 6**, "Criminalization under national Law", we would like to underscore that no customary rule obliging States to penalize crimes against humanity exists, and there is no agreed definition of crimes against humanity yet, the text of the draft article should be written in a recommendatory manner, avoiding the use of the word "shall". The suggestion made by some delegations during the first resumed session that the only the first paragraph of draft article

6 should be retained, as the text goes beyond the Genocide Convention, may also be given due consideration.

3. The draft articles **7, 9 and 10** are based on an expansive interpretation of the doctrine of “universal jurisdiction” on which the Committee had been unable to reach consensus, even though the item had been on its agenda for over a decade. It is clear that more discussions are needed to proceed with these Articles. It is imperative to take into consideration that the text should not be misused to exercise jurisdiction following political considerations and to avoid extraditing the accused to States that would have grounds to exercise jurisdiction for the alleged crimes committed. The suggestion to limit the text of draft article 7 to follow the wording of the Genocide Convention could also be explored.

4. Currently, as drafted **Article 7** presents a scenario where multiple States may assert national jurisdiction over a criminal offense, potentially leading to conflicts. In cases of conflicting jurisdiction, it is suggested that clear priority be given to the State capable of exercising jurisdiction based on at least one of the criteria outlined in Article 7, paragraph 1, rather than a custodial State limited to jurisdiction under Article 7, paragraph 2 alone. This approach is justified by the principle that the former State would typically have a stronger interest in prosecuting the offense at hand, thus ensuring a more effective and just resolution.

Cluster 4 International Measures (Articles 13, 14 & 15)

Mr. Chair,

Within this Cluster, my delegation wishes to focus its comments specifically on draft **Article 13** for now. My delegation would like to seek clarification regarding whether all offenses outlined in the draft articles are deemed extraditable without exception for political offenses. As currently drafted, my delegation perceives this paragraph as overly prescriptive, potentially impeding States' ability to thoroughly assess extradition requests. There is a need for more nuanced consideration of paragraph 3, particularly given the absence of a similar provision in either the United Nations Convention against Corruption or the United Nations Convention against Transnational Organized Crime.

2. The language in paragraph 9 regarding the assumption that offenses covered under these draft articles shall be treated as if they have occurred not only in the place where they were committed but also in the territory of states that have established jurisdiction over them with draft Article 7, paragraph 1, is confusing. It is important to highlight that there is no comparable provision to paragraph 9 of the draft articles in either the United Nations Convention against Corruption or the United Nations Convention against Transnational Organized Crime. Therefore, a more thorough consideration of this provision is necessary.

Cluster 5 (Safeguards (Article 5,11 and 12))

Under this cluster, my delegation for now, will only comment on **12**.

2. In **Article 12**, paragraph 3, States are required to ensure that victims of crimes against humanity have the right to obtain reparation for material and moral damages, individually or collectively. My delegation suggests that an explicit reference to moral damages is unnecessary, to allow each State to determine the scope of eligible compensation.

I thank you, Mr. Chair.
