

**Statement by Ms. Miyoung Song, Director of the Treaties Division, Ministry of Foreign Affairs of the Republic of Korea**  
**Resumption of 78th Session of General Assembly, Sixth Committee (Agenda: Crimes against Humanity), Cluster 2**  
**New York, 1 April 2024**

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**Cluster 2 : Definition and general obligations (Draft articles 2, 3 and 4)**

Thank you, Mr./Madam Chair,

With respect to draft Article 2, the Republic of Korea notes with satisfaction that most of the provisions on the definition of crimes against humanity align closely with customary international law and the existing rules and principles derived from the pertinent treaties, notably mirroring Article 7 of the Rome Statute. Therefore, our delegation wishes to express its support for the current language of draft Article 2 as it is.

It is our belief that it is crucial for the draft Articles to be in consonance with the provisions of the Rome Statute, particularly regarding the definition of crimes against humanity, in order to preclude any ambiguity. While we do not oppose any appropriate changes, we are cautious about any deviations from the existing definition, considering its widespread incorporation into domestic legislation, including in some non-State Parties of the ICC. In addition, it is worth noting that paragraph 3 of draft Article 2 does not preclude broadening the definitions in other international instruments or in national legislation.

On the matter of the chapeau in draft Article 2, we have a specific comment

on the function of the chapeau element and the question of whether the attack should be “systematic **or** widespread” versus “systematic **and** widespread.” According to the jurisprudence from international tribunals, crimes against humanity has a dual-layered structure, which consist of the ‘conduct level’ and the ‘context level.’ In our view, the contextual element is the most crucial issue to consider when determining whether a set of facts constitutes crimes against humanity. It specifies that the act must be part of a widespread **or** systematic attack directed against any civilian population. The commencement of judicial operations in international criminal law hinges on the confirmation that the contextual threshold for crimes against humanity has been met. Therefore, we wish to clarify that the prerequisite for an act to be considered as a crime against humanity is that it should be either “systematic **or** widespread,” rather than “systematic **and** widespread.” This distinction is crucial as many cases and precedents, including those from the ICTY and the ICC, support the interpretation that the requirements are alternative, rather than cumulative.

With regard to draft Article 3 and 4 on the general obligation and obligation of prevention, our delegation broadly supports the current wording and substance. We also believe that their language aligns with the terminology commonly employed in treaties, including phrases like “as appropriate,” that are utilized without necessitating additional clarification.

We note that draft Article 4 allows some flexibility for each State to choose how to prevent crimes against humanity, and therefore, it is not necessary to

prescribe the means of prevention in too much detail. We believe this approach ensures that States can tailor their preventative measures to suit their specific legal and administrative frameworks, thereby enhancing the efficacy and implementation of these critical obligations.

I thank you.

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