

**Crimes against humanity**  
**Agenda item 80**  
**78<sup>th</sup> session (resumed)**

**DRAFT DECLARATION FOR THE USE OF EXCHANGE OF VIEWS ON**  
**THEMATIC CLUSTER I**  
**DRAFT ARTICLES , PREAMBLE AND ARTICLE 1**

Mr Chair, and distinguished delegates,

It is a great pleasure to address the Sixth Committee today. We would like to take this opportunity to offer our sincere appreciation and gratitude to the International Law Commission (ILC), Special Rapporteur Sean Murphy, all the members of the Bureau and fellow delegations for their continuous efforts on these draft articles.

Türkiye values synergy created here today and efforts of mutual understanding amongst States especially in the context of international crimes.

Turkiye also would like to note the importance of this work especially when gross violations of international law, which may amount to genocide or crimes against humanity are being committed in Gaza and yet impunity persists.

Mr. Chair,

Crimes against humanity have the potential to disrupt social order and the rule of law, and jeopardize peace and security. They threaten human dignity and the very foundations of this organization.

Ensuring that such crimes are prevented and duly punished must remain at the heart of the international community's efforts to achieve the purposes set out in the Charter of the United Nations.

Türkiye, like many other countries, has codified crimes against humanity in its national law and supports international efforts to tackle such crimes.

In our view, the Sixth Committee's extensive discussions on this topic over the past few years demonstrated that crimes against humanity are complex in many dimensions and yet to be codified in national legislations in a uniform manner.

Recognizing that States have a wide range of different views on the draft articles, we wish to underline that in order to secure the broadest acceptance of any proposed convention on crimes against humanity, it should reflect widely accepted principles on the subject and contain safeguards against their potential abuse with political motives.

In the absence of such safeguards, any convention could give rise to tensions between the States and undermine rather than strengthen the efforts to promote justice. We would like to refer to our previous statements in this regard.

With this understanding, we support a meaningful, inclusive and structured discussion where the concerns of all member States are taken into account.

## **Preamble**

Mr.Chair,

We believe that the preamble and Article 1 overall reflect the complexities on crimes against humanity we referred to earlier.

As for the 3<sup>rd</sup> preambular paragraph, Türkiye considers that making a general reference to the principles of international law embodied in the UN Charter would be preferable, given that the UN Charter is foundational, and its principles are widely endorsed by member states.

With regard to fourth preambular paragraph, we would like to point out that making a reference to *jus cogens* in the preamble appears as an uncommon practice, if not unprecedented. Considering this, Türkiye suggests that the Secretariat may undertake a study to explore whether a similar reference has ever been made in the preamble of any other similar type of treaty and, if so, to what extent the relevant treaties and references have been accepted and ratified. Also as previously mentioned by other States, there is some doubt as to the necessity of referring to the *jus cogens* status of CAH in the preamble since this question is dealt in a separate piece of work of the ILC. In view of the foregoing, Türkiye believes that the omission of the paragraph in question would be preferable.

As to the paragraph 7, Türkiye would like to reiterate its previous statements regarding the reference made to the Rome Statute. Since the preamble is meant to show the general direction of the draft convention, we consider the reference to the Rome Statute in the preamble is neither necessary nor useful and that may cause hesitation in non-State parties. Thus, further deliberations are required to ensure wider acceptance of the draft articles.

Türkiye is content with the preamble's emphasis on the primary responsibility of States to investigate and prosecute crimes against humanity, yet as submitted in our written comments on 1st December 2023, we believe further clarification could be provided on the issue of jurisdiction if we formulate the 8<sup>th</sup> preambular paragraph as follows: "Recalling that it is the duty of every State to exercise its criminal jurisdiction with respect to crimes against humanity and affirming that priority should be given to the territorial jurisdiction". We would also be open to discussing any offers by the Secretariat for a paragraph in the Preamble which records the primary jurisdiction of the territorial State to prevent any confusion and misuse.

With regard to paragraph nine, Türkiye notes the reference to the rights of victims, witnesses and others in relation to CAH, as well as the right of alleged offenders to fair treatment. Several delegations expressed interest in expanding the text to reflect a victim-centered or survivor-centered approach. Some delegations also suggested the inclusion of references to 'the right to redress', including material and moral damages, as well as 'the right to truth'. While we welcome attempts to make sure the voices and stories of victims and survivors of such heinous crimes are heard, we are hesitant about whether there is a consensus and clarity about the terms

‘victim-centred’ or ‘survivor-centred’ approaches in international law. Similarly, it is ambiguous whether ‘the right to truth’ is a concept with enough clarity in international law.

In response to the relevant question of the co-facilitators, we share the view that the Draft Articles must clarify that they would not alter international humanitarian law (IHL) or international human rights law, which constitute *lex specialis*. Türkiye concurs with the view that such clarification is particularly needed in order to avoid undermining established IHL norms or criminalizing conduct undertaken per IHL. To this end, the inclusion of a *lex specialis* reference in the preamble would be welcomed by Türkiye.

Concerning the question as to ‘whether the preamble should highlight the rights of particular groups’, while acknowledging that the rights of particular groups are currently more prone to be violated compared to others, Türkiye is hesitant about following a seriatim approach for some technical reasons. As the experience of the preparatory works of the Genocide Convention most vividly proved, providing such a list could cause lingering and fundamentally unresolvable debates about which groups should be listed or left out. As time changes, some groups may become disadvantaged, while others may overcome their disadvantages. A seriatim approach is unable to respond to such possible evolutions and thus any list may become outdated in the future.

#### **Article 1**

With regard to draft article 1, we are of the opinion that no reformulation is currently needed to directly address the object and purpose of a future convention given that the scope and object may evolve and change over time as the overall text evolves.

On the other hand, we believe that prohibition of retroactive application should be explicitly stipulated in the draft articles, since non-retroactivity of treaties and norms is a widely accepted principle of international law. To ensure clarity, in our view an explicit reference to the principle of non-retroactivity, alongside the date of entry into force, must be included in Draft Articles.

Türkiye firmly believes that the primacy of territorial jurisdiction should be clearly established and a provision to this end can be added to draft article 1.

Finally, in our view, it would be useful to include a separate provision regarding general definitions of the terms used in these draft articles.

I thank you.