

 Permanent Mission  
of Austria to the  
United Nations in New York

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Sixth Committee**

**Agenda item 80: Crimes against humanity**

**Statement by Mr. Maximilian Gorke  
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*[Cluster 2]*

Thank you, Mr. Chair,

My delegation fully aligns itself with the statement made by the European Union.

As mentioned earlier, Austria is convinced that the definition of crimes against humanity in **Article 2** of the proposed convention codifies customary international law. While Article 2 is based on the wording of Article 7 of the Rome Statute, the source of this definition remains customary international law. We deem it important to be consistent with regard to the definition of crimes against humanity. Being a State party to the Rome Statute is neither a precondition nor a consequence for the application of the definition. But the definition represents a reasonable starting point of future negotiations. We do not exclude the possibility of further additions to this list, such as, for instance, gender-based apartheid. Furthermore, paragraph 3 of **Article 2** safeguards that broader definitions of crimes against humanity are not precluded from arising. Reacting to certain concerns on the required elements of the offenses, we would like to stress that both the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia deemed it sufficient if either the condition of “widespread” or “systematic” is met concerning attacks.

Although prior conventions, such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, have not expressly provided that States shall not commit the acts in question in those conventions, we see merit in explicitly mentioning the obligation of states “not to engage in acts that constitute crimes against humanity” in **Article 3 (1)**. This obligation is two-fold and applies to state organs as well as persons acting on the instructions or under the direction or control of the state.

We also welcome the addition of the explicit obligation to prevent crimes against humanity in **Article 3 (2)**, as it is also stipulated in the Genocide Convention. Additionally, we welcome the explicit clarification in **Article 3 (3)** that no exceptional circumstances may be invoked as a justification for the commission of crimes against humanity.

The obligation of prevention in **Article 4** includes “effective legislative, administrative, judicial or other appropriate preventive measures”, which was inspired by the wording of the Convention against Torture. Since torture is one of the acts listed in the draft definition of crimes against humanity, a similar approach on the prevention of crimes against humanity is only consequential. We do not consider the set of obligations imposed on states on prevention is too broad. In fact, the addition of “appropriate” to preventive measures gives sufficient flexibility. At the same time, the explicit requirement of preventive measures to be “in conformity with international law” is in line with the jurisprudence of the International Court of Justice.

Thank you.