



02 April 2024

Statement by Loureen Sayej, Third Secretary, before 78th General Assembly Meeting of the Sixth Committee on Agenda Item 80: Crime Against Humanity (Cluster II):

Madam Chair,

The State of Palestine sees a value in the consideration of the Article 7 of the Rome Statute for these draft articles, without prejudice to any State's position on the Rome Statute and without prejudice to broader definitions under international law. Maintaining substantive consistency with existing international instruments is necessary for the maintenance of the international regime of the prevention and punishment of crimes against humanity. As we said before, never in the history has the international community come together to define crimes against humanity as we did during the Rome Statute negotiations. It is a starting point. It leaves, as it should, enough room for further discussions among States to capture or amend other crimes that may be of an interest to the international community, and for Palestine as well, including slave trade as proposed by Sierra Leone, colonialism by Nigeria, and starvation and active genocide by Rwanda.

On the proposed definition of crimes against humanity in the draft article, and without prejudice to ongoing deliberations and discussions:

1. The State of Palestine supports a broader definition of "any civilian population". We are glad to see that the commentary relies on IHL, including AP I to the Geneva Convention, and on extensive jurisprudence, affirming that "any civilian population" should be interpreted broadly, most famously in relation to characterization of a population as a civilian in armed conflicts and the collective nature of the crime;
2. We reiterate that such approach and reliance on AP I will guarantee that the population is not deprived of its civilian character;
3. As for the "with knowledge of the attack" we also agree with the jurisprudence and commentaries that the purpose of the perpetrator for taking part in the attack is irrelevant. There are no justifications for widespread or systematic attacks against any civilian population;
4. We are also of the view that the attack can be either "widespread" or "systematic. The jurisprudence is clear and the conditions are disjunctive rather than conjunctive;
5. We also agree that there is no specific numerical threshold of victims that must be met for an attack against any civilian population to be "widespread" and the attack does not have to be military in nature and may involve organized violence;
6. On "pursuant to or in furtherance of a State or organizational policy", we are of the view that such policy need not necessarily be formalized and can be deduced from the way in which the

acts occur. It is important that we are able to infer a policy from the way acts are committed, rather than insist upon a formalized policy;

7. Attention should also be given to State omissions and failure to take actions to stop the attacks;
8. We also stress that a policy adopted by regional or local organs of the State could satisfy the required elements;

Moving to the acts themselves:

1. On deportation or forcible transfer of the population, we believe that the legality requirement to the presence of people has to be in conformity with international law;
2. Since the draft articles do not confer jurisdiction to an international tribunal, restricting the scope of preventing and punishing persecution is not necessarily applicable here. Indeed, the intentional and severe deprivation of human rights by reason of the identity of a group by itself a crime against humanity;
3. We take this opportunity to recall and support the important submission made United Nations Working Group of Experts on People of African Descent and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the ILC titled "The inclusion of Additional Relevant Authority to the Draft Articles on Crimes Against Humanity". In their submission, they recommend that the definition of persecution include concepts of racial profiling, racial violence, acts of racial hatred, racial segregation, racial subordination;
4. On extermination, we see a value of adding "imposing measures to prevent births" in the definition;
5. As for enforced disappearance, we also note that other definitions did not include the requirement that the person disappeared "with the intention of removing them from the protection of the law for a prolonged period of time..." or "prolonged period of time" and we would like to keep it as such.

As for Articles 3 and 4, we view them of the utter importance as they embody the ultimate aim of the draft articles: to protect humanity by preventing crimes against it and reiterate the obligation of the State. We positively consider any efforts to strengthen these articles.

We agree that States must not engage in crimes against humanity and not commit them through their own organs or persons in accordance with ICJ jurisprudence on the crime of genocide. We take this opportunity to stress the importance of the ICJ jurisprudence and case law to the negotiations towards a Convention on crimes against humanity, in particular ICJ jurisprudence on State obligations and responsibilities, and third State obligation, in relation to the crime of genocide in past, ongoing, and future cases.

We also agree that a breach of this obligation engages responsibility of the State, and pleased to see the commentary includes reference to the draft articles on State Responsibility, especially articles 41 and 48.

As for the second obligation: “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”, we would like to see this explicitly mentioned in the text as was also requested by our colleague from Indonesia yesterday.

The clarification in Article 3(2) that crimes against humanity are crimes under international law, whether not have been criminalized under national law, and are punishable acts, is very important, and so is the clarification that nothing justifies crimes against humanity, not even armed conflicts.

As for Article 4, we stress the importance of States cooperation and the obligation placed on States to prevent crimes against humanity through legislative, administrative, judicial, or other preventive measures, as well as through cooperation with other States and intergovernmental organizations. We are ready to engage with suggestions to include cooperation with international courts. We also positively view the comments made by Office on Genocide Prevention and the Responsibility to Protect on the draft articles and the suggested measures, including: Obligation to prevent crimes against humanity as an extraterritorial obligation and cooperation with agencies, organs, and mechanisms by intergovernmental bodies of the United Nations.

We also support the reference in the commentaries to the Human Rights Council resolution on the prevention of genocide and the measures therein, including responsibility of a State to prevent incitement. We remain open to other measures, including political measures, as mentioned by Australia.

We agree with the commentary that international responsibility of the State arises if the State fails to use to organize the governmental and administrative apparatus to prevent crimes against humanity.

We strongly believe that “any territory under its jurisdiction” is the appropriate jurisdiction needed to indeed prevent and punish crimes against humanity. We also agree with the commentary and reference to ICJ AO on Namibia where it clarified that such formulation covers situations in which a State is exercising de facto jurisdiction, even though it lacks jurisdiction de jure, such as in cases of occupation and annexation. We recall in other cases the ICJ stated that the obligation to prevent genocide is not territorially limited.