



Resumed 78th session of the United Nations General Assembly Sixth Committee: Agenda item 80 crimes against humanity – Cluster IV (international measures)

3 April 2024

Statement by Ms Alexandra Hutchison, Legal Adviser and First Secretary, Permanent Mission of Australia to the United Nations

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Thank you Chair,

This Cluster on international measures is critical to empowering States to fulfill their primary responsibility for the prevention and punishment of crimes against humanity.

Draft article 13

Australia appreciates the detailed elaboration of draft article 13 to assist with extradition requests relating to alleged crimes against humanity.



We note it is modelled off the extradition provisions in the United Nations (UN) Conventions against Transnational Organized Crime and Corruption.

Australia emphasises the importance of paragraph (7) of draft article 13. It ensures that States that oppose the death penalty can comply with their national laws and international obligations, including by refusing extradition unless the requesting State provides an undertaking that the death penalty will not be imposed, or if imposed, not carried out.

We note that States have expressed a range of views on paragraph (11) of draft article 13. Australia supports the objectives of this provision, which would not oblige a State to extradite a person if the State believes that the extradition request was made for the purpose of prosecuting or punishing a person on grounds impermissible under international law, or that compliance with the request would prejudice a person on these grounds.



Nonetheless, we agree with the views of some States that this provision may reflect expanded risk grounds when compared to comparable international crime treaties. Australia is continuing to consider this provision and supports continued discussion on it in the context of treaty negotiations.

Australia reiterates that we recognise States with nationality jurisdiction have particular accountability interests, as well as those with territorial jurisdiction. In our view, paragraph (12) of draft article 13 would therefore benefit from a requirement that States ‘give due consideration to the request of the State in the territory under whose jurisdiction the alleged offence has occurred *and the State of nationality of the accused*’.

We thank those that have expressed support for that proposal.

Draft article 14 and Annex

Chair,



Australia supports draft article 14 and the objectives of the Annex on mutual legal assistance (MLA). Taken together, they provide sufficient detail to assist MLA requests relating to alleged crimes against humanity, particularly when no MLA treaty exists between the States involved.

We acknowledge the views of States that consider there is scope to streamline some aspects of draft article 14 and the Annex to facilitate greater flexibility. We would support further consideration, in the context of treaty negotiations, of how to simplify the Annex.

We note that States have expressed a variety of views on paragraph (9) of draft article 14 on agreements and arrangements with international mechanisms. At this stage, Australia emphasises that this provision only requires States to 'consider, as appropriate', entering into such agreements or arrangements. It does not require States to take any particular action in this regard.



Draft article 15

Chair,

Turning to draft article 15, Australia recognises the importance for any future treaty of a robust framework for the resolution of disputes related to its interpretation and application.

As a general principle, Australia encourages States to turn to the International Court of Justice (ICJ) to resolve their disputes and is convinced that acceptance of the ICJ's compulsory jurisdiction by the widest possible number of States enables the Court to most effectively fulfill its role.

We note that paragraph (3) of draft article 15 enables States to effectively 'opt-out' of obligations that would otherwise require them to proceed to arbitration or dispute resolution through the ICJ.



We acknowledge this model of dispute resolution is reflected in other multilateral crime cooperation treaties such as the UN Conventions against Corruption and Transnational Organized Crime.

However, it is out of step with other treaties addressing serious international crimes of comparable gravity, including the Convention on the Prevention and Punishment of the Crime of Genocide, which recognises the compulsory jurisdiction of the ICJ in relation to disputes under those treaties at the request of the parties.

In that regard, we noted that in their written submissions, several States considered that the Genocide Convention would provide a better model and some preferred for no provision to be made for reservations.

In Australia's view, draft article 15 provides a balanced starting point for negotiations on any future convention.



In the course of those negotiations, States would need to carefully consider a range of factors with a view to striking a balance between drafting a treaty that would be acceptable to the largest number of States, while facilitating States Parties' compliance with it. This would need to include consideration of how the dispute resolution provision sits alongside the treaty as a whole and, in particular, a potential reservations clause.

As drafted, we consider draft article 15 should limit the ability for States to make a declaration under paragraph (3) only upon ratification or accession.

Capacity development

Chair,

Before concluding on this Cluster, Australia wishes to again note that the draft articles do not address the important matter of capacity development.



We consider that strengthening national investigative, prosecutorial and judicial capabilities is essential for preventing and punishing crimes against humanity. It goes hand in hand with a treaty-level codification of these crimes.

A convention elaborated on the basis of the draft articles could play a catalytic role in facilitating greater international cooperation in this regard, and we continue to carefully consider how this could be best achieved.

Thank you.