

*Permanent Observer Mission
of the State of Palestine
to the United Nations*



البعثة المراقبة الدائمة
لدولة فلسطين
لدى الأمم المتحدة

03 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 III):

Mr. Chair,

The State of Palestine reiterates its position that the effective criminalization of crimes against humanity is necessary to ensure, first and foremost, the protection of peoples, and the efficacy of the draft articles on prevention and punishment of crimes against humanity.

We reiterate that crimes against humanity are crimes under international law, whether not have been criminalized under national law. They are also punishable acts. As reiterated in Article 3 of these draft articles. We agree that obligation to establish national jurisdiction over crimes against humanity in domestic legal systems follows from various treaties and customary international law. Thus, it is necessary that national laws ensue accountability for the commission of crimes against humanity, and such criminalization must be consistent with States' obligations and duties under international law.

We are discussing and deliberating the draft articles on the prevention and punishment of crimes against humanity, with an emphasis on prevention. From a criminal liability point, the concern is not merely with the occurrence of crime but also with its prevention.

To one degree or another, national and international jurisprudence and Conventions, most famously Genocide Convention, impose criminal responsibility upon a person who participates in the offence in the form of "accessorial responsibility" through "inducing" "instigating" "inciting" or "conspiring". We have enough history and very painful present to recognize the role of incitement in the physical realization of the message. Incitement is not a freedom of expression.

In this regard, the State of Palestine joins others in affirming that incitement to commit or threat to commit crimes against humanity, in public as well as in private, or directly or indirectly, is a well-established mode of liability under international criminal law, including as it relates to the crime of genocide, and we call for its inclusion in Article 6(2).

We also agree that for responsibility of commanders, subordinates, or any persons who commit, order, or otherwise are complicit in crimes against humanity are liable to punishment and that acting pursuant to an order of a government or superior does not relieve perpetrators from responsibility.

As for "had a reason to know" we are listening to the different comments made including consideration of including similar and more precise terms from Rome Statute Article 28 or Additional Protocol I Article 86 and look forward to engage further on it.

On Article 6(4), the State of Palestine reiterates its long-standing position that there “are no grounds for excluding criminal responsibility” for persons committing crimes against humanity, as it is incompatible with the prevention and punishment of crimes against humanity. We are pleased to see the reference in the Commentaries to Genocide Convention and Apartheid Convention in relation to criminal individual responsibility.

We welcome that the draft Article provides for a relatively wide range of jurisdictional bases. We strongly believe that “any territory under its jurisdiction” is the appropriate jurisdiction needed to indeed prevent and punish crimes against humanity and would like to add to it “its control”. Such formulation covers situations in which a State is exercising *de facto* jurisdiction, even though it lacks jurisdiction *de jure*.

Primacy should also be given to personal and national jurisdiction. We believe that a State has similar obligations to investigate crimes against humanity committed by its organs, armed forces, and private personnel, wherever they may be acting including on a foreign territory. We also caution against any efforts to introduce reservations or opt-outs in this draft article.

As for Article 8, the State of Palestine is encouraged by the ILC’s language on “ prompt and impartial investigation” and the general duty and the threshold of “ reasonable ground to believe” but we are convinced that this is not enough. Investigations into crimes against humanity have to be legitimate, available, effective, and sufficient. For example, in this context, concerns have been raised about military courts for their impartiality and lack of independence in the administration of justice. We stress that independence of the Courts is fundamental to the effectiveness of an investigation or a remedy. Sham investigations carried out in bad faith only shield the perpetrators and provide a legitimacy for the commission of crimes.

We also agree with the Commentaries that such investigations might be done by independent commission of inquiries and we look forward to further discussions with colleagues on this Article. We also recognize that more discussions are needed on the role of international courts and tribunals.

The “reasonable ground to believe” reference would essentially require the competent authorities to merely become satisfied that there exists a sensible or reasonable justification for a belief that a crime against humanity has been or is being committed. This should be interpreted as a low evidentiary standard for, in line with international jurisprudence, and for the sake of truly punishing and most importantly preventing crimes against humanity. We are of the view that “act” instead of “acts” is more appropriate. A single widespread and systematic act against any civilian population would indeed constitute a crime against humanity. To also add “its control” to “any territory under its jurisdiction.”

Finally, we agree with the Commentaries reference of both Security Council resolution 1894 and General Assembly resolution 2840 which called on all States to comply with their relevant obligations, to end impunity, to take the necessary measures for the thorough investigation of crimes against humanity and for the detection, arrest, extradition and punishment of all persons guilty of crimes against humanity and a refusal by a State to do so is, according to the General Assembly, contrary to

the purposes and principles of the Charter of the United Nations and to generally recognized norms of international law.