

Comments and Observations by the Government of Japan on the Draft Articles on
Prevention and Punishment of Crimes against Humanity

I. Japan's general comments on the draft articles

Japan acknowledges the significance of prevention and punishment of crimes against humanity. With an understanding that our discussion on the present draft articles is without prejudice to the question of their future adoption as a convention, Japan is honored to submit comments and observations on the draft articles to help deepen our discussion. Japan will continue to give the draft articles sincere consideration and would like to reserve its right to make further comments on them.

Crimes against humanity are defined in the Rome Statute of the International Criminal Court, which has been playing a crucial role in prosecuting and punishing individuals who have committed crimes against humanity. Japan has been in support of the Court's activities, and in this regard, and from the perspective of legal stability, Japan is of the view that the present draft articles should be consistent with the Rome Statute that provides for State Parties' obligation to cooperate with the Court.

The ultimate purpose of the draft

III. Cluster 3

[Draft article 6, paragraphs 1, 2 and 7]

Japan is of the view that criminalization of crimes against humanity in the draft articles would not necessarily require each State to codify each crime in its national law as an independent offence defined by the same language as draft article 2, and that it would suffice for achieving the purpose of the draft articles to appropriately criminalize the acts that constitute crimes against humanity in each State's national law.

Japan's suggestion in this regard is to modify draft article 6, paragraph 1, as follows:

"Each State shall take the necessary legislative or other measures to ensure that avoid impunity of perpetrators of

misjudgment due to dissipation of evidence as well as persistence of instability of legal relationship and considers this is also the case for many other States. In this regard, Japan believes that it is necessary to carefully consider whether to abolish the statute of limitations concerning all the offences which constitute crimes against humanity as defined in the draft articles.

[Draft articles 7 and 10]

Regarding draft article 7, paragraph 2, and article 10, Japan considers these obligations could be implemented by ensuring surrender of a perpetrator to the International Criminal Court.

Regarding draft article 10, Japan understands that “the obligation [here] is to “submit the case to its competent authorities for the purpose of prosecution”, meaning to submit the matter to police and prosecutorial authorities, who may or may not decide to prosecute in accordance with relevant procedures and policies”, as the International Law Commission pointed out in its commentary,² and that whether to prosecute an offender is left to the reasonable discretion of prosecutorial authorities.

[Draft article 9]

Japan deems it necessary to provide for the condition “the circumstances so warrant” under draft article 9, paragraph 1, in order to take the alleged offender into custody or take other legal measures to ensure his or her presence.

Regarding draft article 9, paragraph 3, which articulates that a State “shall immediately notify the States under draft article 7, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his or her detention”, it may not be possible for Japan to notify the State as referred here under its national law depending on the required information due to confidentiality of investigation, and believes that it is important to ensure flexibility, for example, by modifying it as “notify, **where appropriate**, the State...”.

IV. Cluster 4

[Draft article 13]

Reiterating the view that the draft articles should be consistent with the Rome Statute mentioned in the general comments, Japan considers draft article 13 should be consistent with Article 90 of the Statute that provides for competing requests for

² International Law C

