

Written comments submitted by Malta
on the International Law Commission's Draft articles on Prevention and
Punishment of Crimes Against Humanity

I. Introduction

The crime of genocide and war crimes are the subject of international conventions that require States within their national law to prevent and punish such crimes, and to cooperate among themselves toward those ends. By contrast, there is no global convention dedicated to preventing and punishing crimes agans a6y4i1q0.000008871 0 595.32 omoW*2BT/F432 841.920 2 841.92 r

On gender, according to the Commentary to the draft articles, the ILC approach in the draft articles is based on the definition of crimes against humanity found in the Rome Statute. There is, nevertheless, an important difference:

While there is an express definition of “gender” in the article 7, paragraph 3 of the Rome Statute

“for the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above”

there is no definition of the term “gender” in the CAH Draft Articles.

commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan”³

The ILC retained this limitation in Article 2(1)(h) of the draft articles and explains it as follows:

*t h e c l a u s e “ i n c o n n e c t i o n w i t h a n y a c t r e j
retained due to: (a) a concern that otherwise the text would bring within the
definition of crimes against humanity a wide range of discriminatory practices
that do not necessarily amount to crimes against humanity; and (b) a recognition
that subparagraph 1 (k) encompasses, in accordance with its terms, other
i n h u m a n e a c t s . A s s u c h , t h e “ i n c o n n e c t i o
p a r a g r a p h ” c l a u s e p r n a t u r e o f t h e p e r s e c u t i o n d h a t n c e a s t o
constitutes a crime against humanity, specifically persecutory acts of a similar
character and severity to those acts listed in the other subparagraphs of
p a r a g r a p h 1 . S e p a r a t e l y , i t i s . ” n o t e d t h a t*

would shock the conscience of humanity, could once again emerge; second, that it was a crime distinct from persecution on the ground of race, which was also codified; and third, that it was imperative that the international legal system be strengthened in its ability to bring future perpetrators of the crime of apartheid to justice.

Malta thus strongly welcomes the inclusion of draft article 1(j). However, should there be a broad support in favour of amending the ILC draft articles, Malta considers that States should have a broad discussion on whether the definition of apartheid in Article 2 (h) should more accurately define the essence of a crime perpetrated by those who seek to institute and maintain a form of governance designed to systemically oppress and dominate a subset of society, including when based on gender.

The crime of apartheid should be broadened to include inhumane acts committed in the context of an institutionalized regime of systematic oppression and domination by one gender group over another gender group or groups and committed with the intention of maintaining that regime.

Malta therefore proposes the following amendment (in underline) to the definition of the “crime of apartheid”, contained in Article 2(2)(h) of the draft articles:

the need of a global instrument dedicated to preventing and punishing crimes against humanity and promoting inter-state cooperation