

Crimes against humanity

Agenda item 80

78th session (resumed)

DRAFT DECLARATION FOR THE USE OF EXCHANGE OF VIEWS ON
THEMATIC CLUSTER II
DRAFT ARTICLES 2, 3 AND 4

Madam Chair, and distinguished delegates,

We would like to share our views on Cluster II with regard to Article 2. Türkiye would like to reiterate its concern that modelling the definition largely after the Rome Statute could further complicate the modalities of implementation. As was previously pointed out by some Members, the Rome Statute is not signed or ratified by more than 100 Member States. Thus, Türkiye remains hesitant about the extent to which draft article 2 reflects customary international law. To further substantiate our concerns, it should be noted that definitions in international treaties and instruments differ on a variety of issues.

As a non-party to the Rome Statute, Türkiye suggests that there is value in giving further consideration to the definition of crimes against humanity in the draft articles. Some of the elements used in the definition lacked clarity and could complicate national prosecutions. As proposed under a
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SRSXODWLRQ. DQG †RUJDQL]DWLRQDO SROLF\ WR FRP
previous statements.

In this context, we also would like to reiterate that our view, the definition in the Rome Statute overbroadens the scope of the crimes against humanity. We suggest that, in order to
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elements, both of which must be met, rather than alternative to one another.

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RI¶ P XVW EH FODULILHG WKURXJK WKH ZLGHVW SRVVL
:LWK UHJDUG WR WKH TXHVWLRO DV WR µZKHWKHU †
ZKHWKHU WR GHOHWH WKH FROQHFWLRO WR RWKHU D
DERXW UHFRQVWUXFWLQJ µSHUVHFHWLRO¶ DV D VWDO
:H EHOLHYH WKDW WKH GHILQLWLROV RI WKH XQGHU
VLQFH LQ WKH GUDIW DUWLFOHV DQG FXVWRPDU\ LQV
almost kind of an umbrella term.

We would like to take this opportunity to stress that as another civil law tradition country, we agree with
%UD]LO¶V SRVLWLRQ all works done by the Human Rights Commission
contradiction with the strict legality principle that we adhere to.

)LQDOO\ ZLWK UHJDUG WR WKH †ZLWKRXW SUHM XGLF
that there exists no need to make such a reference given that, as is well established, international law is not and cannot prevent states from accepting definitions under their national jurisdictions. Even in circumstances where a State has entered into a treaty obligation to that effect, as a natural consequence of the principle of sovereignty, a broader or narrower definition in domestic law will not result in the invalidity of that definition.

A particular issue that the Turkish Delegation has observed is that there is a serious possibility that the omission of paragraph three of the definition provided in the Rome Statute may

Türkiye considers that a future convention may benefit from an explicit recognition of the authority.
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Further with regard to the phrase "in accordance with the law" appears rather ambiguous and too broad. Türkiye believes that the phrase should be clarified.
DUAW LFOH D WKH WHUP URU RWKH

As to draft article 4 (b), regarding the scope of the obligation to cooperate with other States and relevant organizations, there is no guidance on which organizations are referred in this paragraph or how to address situations where such cooperation might not be possible. Thus, we believe that the draft article should be clarified.
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\$V WR WKH TXHVWLRQ ZKHUH LV D QHF
LQWHUQDWLRQDO FRXUWV DQG WULEXQDOV DIWHU DV
contradict no. 6. The draft article should be clarified.
WDPWH SDUWLHV SRVLWLRQV EHFDXVH WKH
tribunals and their jurisdictional reach is limited. Alternatively, we suggest, the addition of
a reference and thus the obligation in question may be explicitly limited to the member State
who recognized the jurisdiction of the court or tribunal in question.

I thank you.