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Agenda item 80
Crimes against humanity

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Report of the Secretary-General

Addendum

I. Introduction

1. Comments and observations have been received from France and Ireland. Given the number of contributions received, as well as their length, the comments and observations had to be summarized for the present report.¹

II. General comments and observations and the recommendation of the International Law Commission

2. Support was expressed for the elaboration of a convention on prevention and punishment of crimes against humanity.² It was stated that the draft articles provided a solid and comprehensive basis for negotiation of a future convention on the topic³ and that such a convention would fill an existing gap in the international legal framework.⁴ Support was expressed for the recommendation of the Commission that a convention be elaborated by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles.⁵

3. The importance of ensuring that the draft articles were consistent with existing international instruments, such as the Rome Statute of the International Criminal

¹ See [A/C.6/77/L.23](#), para.4. The submissions of Governments, which contain detailed and intricate textual proposals and legal analyses, have been summarized owing to space constraints. The summaries in the present report are without prejudice to States' full comments and observations, as well as positions States might have taken previously and may take in the future. The full texts of the submissions are available on the Sixth Committee website: <https://www.un.org/en/ga/sixth/78/cah.shtml>.

² See, for example, the comments and observations submitted by France and Ireland.

³ See, for example, the comments and observations submitted by Ireland.

⁴ See, for example, the comments and observations submitted by Ireland.

⁵ See, for example, the comments and observations submitted by Ireland.



Court and the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes, was emphasized.⁶ Detailed views on the relationship between a convention on crimes against humanity and the Rome Statute were submitted.⁷

4. The view was expressed that the remaining issues regarding the draft articles on which there was divergence among delegations could be narrowed down at the resumed session of the Sixth Committee, to be held in April 2024.⁸ It was hoped that such divergences as continued thereafter would be resolved in the negotiations on the elaboration of a new convention.⁹

III. Thematic cluster 1: draft preamble and draft article 1

Draft preamble

5. France welcomed the fact that the draft preamble drew inspiration from the preamble of the Rome Statute.

Fourth preambular paragraph

6. According to France, the draft articles should refrain from referencing the prohibition of crimes against humanity as a peremptory norm of general international law (*jus cogens*). France highlighted that the work of the Commission on the peremptory norms of general international law was subject to disagreement among States.

IV. Thematic cluster 2: draft articles 2, 3 and 4

Draft article 2

Definition of crimes against humanity

7. France supported modelling draft article 2 after the definition of crimes against humanity contained in the Rome Statute, subject to the adjustments the Commission had already made.

Draft article 4

Obligation of prevention

Subparagraph (b)

8. Ireland suggested further clarification regarding the scope of the draft article, in particular subparagraph (b), to detail what is envisaged by the obligation to cooperate with “relevant intergovernmental organizations and, as appropriate, other organizations”. It was considered important to ensure that States could fully and effectively discharge their duty in that regard.

⁶ See, for example, the comments and observations submitted by France.

⁷ See, for example, the comments and observations submitted by France.

⁸ See, for example, the comments and observations submitted by Ireland.

⁹ See, for example, the comments and observations submitted by Ireland.

V. Thematic cluster 3: draft articles 6, 7, 8, 9 and 10

Draft article 6

Criminalization under national law

9. France expressed support for the approach of not including a specific provision relating to immunities and amnesties in the draft articles.

Paragraph 7

10. France suggested expressly excluding the death penalty from the scope of the provision and provided detailed comments on the issue.

Paragraph 8

11. France welcomed the inclusion of the provision regarding liability of legal persons, while noting that inspiration could be drawn from the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes and further details on the matter could be provided in the paragraph.

Draft article 7

Establishment of national jurisdiction

12. France suggested phrasing the draft article in such a way as to enable States to maintain a fair balance between criminal jurisdiction established in accordance with national law and the exercise of universal jurisdiction and submitted detailed comments about its national legislation on the issue of jurisdiction. For Ireland, the draft article provided for the exercise of “treaty-based quasi-universal jurisdiction” or territorial jurisdiction over persons present in the forum State, albeit with respect to acts committed outside that State. Ireland emphasized that the provision allowed for the exercise of other forms of criminal jurisdiction established by a State, including universal jurisdiction.

13. France and Ireland suggested further discussion on the issue of competing jurisdictions. For Ireland, jurisdictional priority should be given to those States with the closest nexus to a crime. For France, draft article 15 on “Relationship to competent international criminal tribunals”, as proposed in the third report of the Special Rapporteur, should be reinserted in the draft articles.

Draft article 8

Investigation

14. France stressed that the scope of the phrase “prompt, thorough and impartial investigation” lacked clarity and was subject to different interpretations, stressing that the concept of impartiality should not be used as a pretext to question the judicial system of another State. According to France, the provision should not undermine prosecutorial discretion.

Draft article 9

Preliminary measures when an alleged offender is present

15. France suggested replacing the word “State” in the three paragraphs of the draft article with the expression “competent authorities” to ensure consistency with draft article 8.

Paragraph 2

16. France suggested replacing the term “preliminary inquiry” with a more generic term, such as “inquiry” or “investigation”, as the word “preliminary” might have a specific meaning in national legal systems.¹⁰

Paragraph 3

17. France made specific textual proposals to provide for the confidentiality of investigations, as it may be required under national laws, in particular with regard to the principle of the presumption of innocence and questions of procedural efficiency.¹¹

VI. Thematic cluster 4: draft articles 13, 14 and 15 and annex

Draft article 13

Extradition

Paragraph 6

18. France emphasized that the paragraph provided grounds for refusing extradition of an individual to a State where they could potentially face the death penalty and offered detailed information about its obligations in that regard under national law and international conventions.

Paragraph 7

19. France suggested adding at the beginning of the paragraph the phrase “Except in the cases provided for in the present article”, to take into account the preceding paragraphs.¹²

Suggested new provision

20. Ireland proposed including a reference to the right to refuse extradition to a State that applied the death penalty without a guarantee by that State that the death penalty would not be used in the case of the person being extradited.

Draft article 14

Mutual legal assistance

21. France suggested clarifying in the draft article that mutual legal assistance could be used for providing financial documents, as well as for the following purposes: (a) to ensure the protection of witnesses in accordance with national law; (b) to carry out security measures on behalf of the requesting State that are compatible with the rules of the requested State; and (c) to provide assistance in the interception of communications and in special investigative techniques.

¹⁰ For a detailed justification, see comments and observations submitted by France.

¹¹ For the full justification and text of the proposals, see comments and observations submitted by France.

¹² For the full text of the proposal, see comments and observations submitted by France.

VII. Thematic cluster 5: draft articles 5, 11 and 12

Draft article 12

Victims, witnesses and others

22. France suggested that the rights of victims be addressed in a stand-alone article, as their situation was often distinct from that of witnesses. It mentioned that the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes could serve as an example.

Paragraph 1

23. France called for clarification regarding the duty of States to examine complaints in an impartial and expedient manner and to allow victims and witnesses to present their opinions and observations during criminal proceedings.
