



by

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Crimes against humanity
Cluster I

Mr. Chair,

Slovakia fully aligns itself with the statement made on behalf of the European Union and its Member States

The fact that crimes against humanity can occur in times of peace only reflects the current status and the development of international law after Nuremberg. The no prejudice clause follows the mode of prior legal instruments providing the necessary flexibility for States that wish to enact broader definitions in their domestic legal orders.

Mr. Chair,

I will now address jointly draft articles 3 and 4. They both regulate obligations of States and are closely interrelated. We note with satisfaction that the first two provisions of draft article 3 are in line with the relevant case law of the International Court of Justice referred to on various occasions.

The passive obligation not to engage in acts constituting crimes against humanity is a confirmation of a well-established rule that even if State cannot commit a crime under international law, such conduct, if committed by organs or persons over whom State has control, can be attributable to a State and thus trigger that State's responsibility. Importantly, this obligation includes not only the commission of such acts, but also aiding, directing or coercing. We are open to further discussions, as to whether those modes also encompass abetting or incitement to commit crimes against humanity, even if not specifically mentioned in the ILC commentaries.

The active obligation of States to prevent and punish crimes against humanity is equally important. It is directly linked with draft article 4 specifying two streams of the preventive obligation. Obligation of prevention is an obligation of conduct, as defined in Article 14, paragraph 3 of the Articles on Responsibility of States for Internationally Wrongful Acts and further confirmed by the jurisprudence of the ICJ. The breach of such obligation would only occur if crimes against humanity were actually committed.

Regarding paragraph 3 of draft article 3, we are pleased to note that the text does not limit the applicability of the provision only to the conduct of States.

Finally, draft article 4 is a reflection of a due diligence obligation to prevent crimes against humanity ab initio