

Check against delivery

**72st Session of the General Assembly of the United Nations
Sixth Committee**

Agenda item 81

**International Law Commission
Report on ILC's 69th Session**

Chapter IV – Crimes against humanity

Chapter V – Provisional application of treaties

Chapter XI – Other decisions and conclusions of the Commission

Speech delivered

General considerations

I would like to begin my statement by thanking the Chair of the International Law Commission for the comprehensive pr ILC session.

I would equally like to take this opportunity to express the deep consideration of the Romanian delegation to all members of the International Law Commission for the work carried out during this 69th session.

We assess this report of the ILC as a very good report, reflecting a good progress of work on important topics that are on the agenda of the Commission.

measures, as well as on fostering more effective inter-State cooperation on the prevention, investigation and prosecution of such crimes.

However, we highlight the fact that any new instrument in this field should not conflict with or undermine existing international law.

Along these lines, the Romanian delegation has supported the approach of the Commission of not departing from the relevant provisions of the Rome Statute of the International Criminal Court and shares the view that the result of this exercise should be seen as a contribution to the implementation of the principle of complementarity under the ICC Statute.

We reiterate our support for the inclusion of provisions which draw attention to the gravity of these crimes, such as the requirement to provide appropriate penalties in the criminal legislation and the obligation of prevention. On this second matter, we note the commentary of the Commission clarifying the fact that a State must pursue effective preventive measures in any territory under its jurisdiction, including in situations of *de facto* jurisdiction.

As the definition of crimes against humanity is built on article 7 of the 1998 Rome Statute, we welcome the confirmation by the Commission of the possibility of prosecuting non-State actors for such offenses. At the same time, we take note of the recommendation to include a provision on liability of legal persons in draft article 6, which moves away from the approach followed by the drafters of the ICC Statute. Whilst we recognize the dissenting views on the latter topic, we emphasize the flexibility for States in implementing this obligation, given that such liability is subject to the provisions of the respective national law.

Taking into account the egregious nature of this international crime, we consider that the current draft articles on establishing jurisdiction meet the desired objective of leaving no safe haven for persons responsible for such offenses. In this regard, we have supported placing the principle *aut dedere aut judicare* at the heart of framing the issue of jurisdiction, following the model of other international treaties.

In the context of applying the passive personality principle when assuming the jurisdiction, we would find merits in better clarifying the conditions under which the jurisdiction might be established in this case given that, as defined, crimes against humanity means acts committed as part of systemic attack directed against any civilian population, that is there is not only one single victim of this type of crimes. The formula used in art. 7 para 1c) might not be reflective accurately of the definition of the crimes and might raise questions as to a possible threshold (one victim, the majority of the victims) that could be envisaged to trigger the jurisdiction of a State. At the same time, we wonder whether the same letter c) could not be formulated in the

by highlighting, on the one hand, the open door for another State with concurrent jurisdiction and, on the other hand, the need to evaluate the permissibility of the amnesty in light of that

We consider that the articles on extradition and mutual legal assistance provisionally adopted

As regards guidelines 3 and 4, we consider that the commentaries do not provide enough clarity regarding the source of the obligation for prov

establishing a temporal limit on provisional application, we consider that further attention should be given to the temporary nature of this legal institution.

This delegation looks forward to the next reports and expresses the conviction that they will bring even more clarity on this topic.

Chapter XI – Future work of the ILC

Next year it will be a solemn year for the International Law Commission and for the entire international legal community – the marking of the 70 years of ILC. We welcome the prospective initiatives we find in the report for marking this venerable age and we already declare our readiness to support and participate in these events.

We are as well very pleased to see in the report a more thorough organization of the work of the Commission for the next years with a specific calendar for each of the topics on the agenda of the ILC. In this way, not only the work of the Commission can be better anticipated and followed, but also our work with regard to various contributions that are needed in respect of the topics on the agenda.

As far as the new topics included on the ILC long-term programme of work we express the following views:

With respect to the *general principles of law* topic, we favour in principle that this topic is followed up by the ILC, being an important source of international law as underscored in art. 38 of the Statute of the International Court of Justice. In our view it is important that the work of the ILC on this topic be focused on its practical relevance, thus avoiding to end up with a too theoretical product of the Commission.

Evidence before international courts and tribunals is, in our view, a rather technical and very specific topic, having a limited relevance to international law in general. Therefore, we are rather reluctant of it being included within the agenda of the ILC.

Romania would, as well, be interested in ILC embarking on the consideration of one of the topics that was proposed last year for its future work, namely settlement of international disputes to which international organisations are parties. Such disputes are very frequent nowadays and merit special attention in view of clarifying the legal implications of such situations and the limitations of such private law disputes from the jurisdictional point of view.

Following on the reminder of the Commission in para. 33 of its Report, this delegation considers that one topic that could be address by the ILC, since it poses important legal questions for the

present, but even more so for the future, is the implications from the international legal standpoint of the sea-level rise.

This phenomenon is increasingly impacting our societies and its legal implications become more and more relevant, having a practical legal perspective..

A myriad of issues arise from the factual effects of the sea-level rise, in particular upon islands and other maritime formations. Territorial changes, effects on existing or prospective maritime boundaries, consequences of the resulting migration of peoples all need to be addressed including, if not especially, by international law.