

**Written contribution of the European Union on the draft articles on crimes against humanity, as adopted on first reading by the International Law Commission at its 69<sup>th</sup> session**

The European Union has the honor to present to the International Law Commission the following comments and observations on the draft articles on crimes against humanity, adopted on first reading by the International Law Commission (ILC) at its 69<sup>th</sup> session, as requested by the letter of the Under-Secretary-General for Legal Affairs of 11 September 2017.

**General remarks**

1. The European Union wishes to express its appreciation for the work of the International Law Commission on the topic of crimes against humanity and for the swift adoption of the entire set of draft articles on first reading.
2. The ILC, in the general commentary to the draft articles on crimes against humanity (Doc. A/72/10, p. 22), recalls that the Rome Statute establishing the International Criminal Court (ICC) only regulates the relations between States and the ICC. It further notes in this context that the Rome Statute and other instruments setting up international or hybrid criminal courts or tribunals only address the prosecution of crimes falling under their jurisdiction, but do not require States to prevent and punish crimes against humanity.

3. As regards the ICC, the ILC notes that the draft articles on crimes against humanity could therefore contribute to the implementation of the principle of complementarity enshrined in the Rome Statute.
4. The general commentary also notes that the scope of crimes against humanity goes beyond serious violations of international human rights law, international humanitarian law and existing international criminal law.
5. The European Union recalls that the support for the rule of law and the principles of international law are among the core objectives of its external action (Article 21 of the Treaty on European Union).
6. In line with the Global Strategy for the European Union's Foreign and Security Policy (Shared Vision, Common Action: A Stronger Europe - A Global Strategy for the European Union's Foreign and Security Policy ; [https://eeas.europa.eu/archives/docs/top\\_stories/pdf/eugs\\_review\\_web.pdf](https://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf)), prevention of genocide and other atrocity crimes are an integral part of the Foreign Policy of the European Union. The Global Strategy also embodies the European Union's strong commitment to promoting respect for international humanitarian law.
7. The European Union believes that the strengthening of international courts, tribunals and mechanisms serves the purpose of ensuring accountability for serious violations of international humanitarian law and human rights law. The work of the ILC on crimes against humanity could contribute to enhancing the role of such judicial mechanisms.
8. For that reason, the European Union and its Member States have from the beginning supported the International Criminal Court (ICC) in its work and continue to encourage the widest acceptance of its jurisdiction, and to promote the effective implementation of the principle of complementarity.
9. The Rome Statute's preamble states that "the most serious crimes of concern to the international community as a whole must not go unpunished". This is a core principle for the European Union. Perpetrators of atrocities need to be brought to justice and held to account, while guaranteeing the rights of the accused. The European Union thus remains firmly committed to the fight against impunity for such serious crimes, including crimes against humanity.
10. The development of a set of international rules on the prevention and punishment of crimes against humanity would therefore be consistent with the European Union's objectives and policies in matters of international criminal law and justice, including the EU's established position on the death penalty and the prohibition of inhuman or degrading treatment or punishment. It will also contribute to the respect of the principles of *nullum crimen sine lege*, reflected in Article 49 of the Charter on

Fundamental Rights of the European Union and Article 7 of the European Convention on Human Rights.

11. In this context, the EU also notes the existence of an international initiative supported by a number of EU Member States aimed at the effective investigation and prosecution at the national level of war crimes, the crime of genocide and crimes against humanity, by enhanced multilateral legal cooperation.

### **Specific comments**

12. The European Union shares the view that the draft articles on crimes against humanity must ensure consistency with the Rome Statute of the ICC.
13. The European Union takes note in this regard of the commentaries to draft article 3, which indicates that the definition of crimes against humanity in the first three paragraphs is identical to the one of the Rome Statute, "*except for three non-substantive changes ... which are necessary given the different context in which the definition is being used*". The European Union also notes that paragraph 4 of draft article 3 provides that the definition of crimes against humanity it contains is "*without prejudice to any broader definition provided for in any international instrument or national law*". This type of language appears to preserve the definitions under the Rome Statute and avoid any inconsistency.
14. In relation to draft Article 12, the European Union notes that this draft article reflects similar provisions contained in recent international treaties regarding serious crimes.
15. As far as its own practice is concerned, the European Union wishes to inform the ILC on relevant provisions contained in EU law on the rights of victims of crimes, in particular those set out in Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (OJ L 315, 14.11.2012, p.57-73). This Directive contains substantive and detailed provisions on victim's rights in the context of criminal proceedings (e.g., right to be understood, right to receive information, right to interpretation and translation, specific participation rights in criminal proceedings, right to protection, right to legal aid, etc.).
16. As regards the victims' rights to obtain reparation, the European Union notes that draft Article 12 (3) provides in a comprehensive manner several forms of reparation which appear to be tailored to the specific needs of victims of crime against humanity, including restitution, which goes beyond mere compensation. Moreover, in terms of the

scope of reparation, the European Union notes that draft Article 12 (3) covers both material and moral damages.

### **Relevant EU legislation**

17. For the benefit of the ILC and its work on the draft articles on crimes against humanity, the European Union takes the opportunity to provide information on EU legislation in criminal justice matters. The legal acts mentioned below are mostly of a procedural nature and concern the cooperation between the Member States of the European Union in criminal justice matters.
18. As regards their scope, these legal acts cover the crimes falling under the jurisdiction of the ICC and, hence, also crimes against humanity.
19. The relevant EU law is the following:
  - Council Act of 29 May 2000 establishing the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12.7.2000, p.1);
  - Council Decision 2002/494/JHA of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (OJ L 167, 26.6.2002, p. 1–2);
  - Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p.1);
  - Council Framework Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes (OJ L 118, 14.5.2003, p. 12-14);
  - Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, P. 45-55);
  - Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16–30);
  - Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p. 59–78.);
  - Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters

imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008, p. 27-46);

- Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (OJ L 337, 16.12.2008, p. 102-122);

- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57-73);

- Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in Criminal Matters (OJ L 130, 1.5.2014, p. 1-36).

20. The European Union stands ready to provide additional information and clarifications on its legislation, should the ILC so wish.

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