



*The Permanent Mission of Portugal
to the United Nations*

**Portugal's comments concerning the topic
"Crimes Against Humanity"**

Portugal would like to salute once again the conclusion of the work by the International Law Commission and to renew its tribute to the Commission and to the Special Rapporteur, Mr. Sean Murphy.

In our understanding, the draft articles on "Crimes against Humanity" provide a solid and strong basis for the discussion about a future convention covering both the substantive and procedural aspects of this topic. Such an instrument could be one more step to fighting impunity and ensuring accountability where these crimes are concerned.

Nonetheless, we are still of the opinion that the Commission should take a careful approach when it comes to the adoption or adaptation of solutions that have proved to be successful for other types of crimes. We should resist the temptation of simply transposing already existing regimes that were not designed for the specific context and legal nature of crimes against humanity. Thus, we consider that the draft articles may benefit if this issue is revisited upon the second reading of the draft articles.

Portugal has always considered the study on this topic should be conducted resorting to the existing rules and practice so as to prevent entering into conflict with the already existing legal framework dealing with crimes against humanity. In this sense we are pleased to notice that the Rome Statute and the language contained therein are key references of ILC's work and that the relations between these draft articles and the Statute were taken into account by the ILC.

Allow us now some brief comments on a few specific articles. In light of our comments, we welcome the use of the definition of crimes against humanity contained in Article 7 of the Rome Statute with the necessary changes in the proposed draft article 3. As the Commission stated such



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definition has been accepted by more than 120 States and it reflects how these crimes are understood today.

Regarding the liability of legal persons, we must recall that there aren't many States that recognize such liability. Portugal informs that it already foresees in its criminal legislation the liability of legal persons in certain cases. In our view, the wording proposed for paragraph 8 of draft article 6 offers flexibility and gives discretion on the matter to States. However, we feel there might be merit in a further study of this question.

In this regard, having adopted a provision on States taking measures to establish the liability of legal persons, the Commission should also consider this issue regarding the establishment of national jurisdiction. From the reading of the wording of draft article 7, as well as of its commentary, it seems this provision only takes into consideration cases where the offender is an individual.

Concerning draft article 12 "Victims, witnesses and others", we note that the current drafting deals both with the different participants in the criminal proceedings - victims, witnesses and others - and with different stages of the proceedings - namely the participation in the proceeding itself and the award of compensations to the victims. Even though the heading of this draft article seems to allow for an extensive coverage of the subject, it seems to us that this provision would benefit if the question of compensations were to be addressed in a separate article. In our view, it would make the text clearer as these two stages of the proceedings would be treated separately.

Furthermore, we consider that a single article dealing solely with the issue of compensations would give more emphasis to the rights of victims.