

Committee on Enforced Disappearances

Statement on the draft articles on crimes against humanity adopted by the International Law Commission

Adopted on 1 June 2018, during the 14th session of the Committee (22 May - 1 June, 2018)

Following previous useful consultations with the special rapporteur of the International Law Commission about its draft convention on the crime against humanity (A/CN.4/L.892) and eager to bring a contribution as invited by the ILC in line with the resolution A/RES/72/116 of the United Nations General Assembly;

Welcoming the adoption after a first lecture of the draft convention on the crime against humanity with the objective to reinforce the legal co-operation in the fields of prevention and repression of international crimes,

Recalling that the International Convention on the Protection of all Persons from Enforced Disappearance, adopted by the resolution A/RES/61/177 of the UNGA in 2006 and ratified by 58 States Parties, is a legal milestone in this matter,

Recalling also the progress of the customary law and the importance of the progressive development of international law,

The Committee on Enforced Disappearances

1. Considers that the universal ratification of the Convention on the Protection of all Persons from Enforced Disappearance, following the resolution A/RES/72/183 of the UNGA, ought to be a priority for the member states, as well as the ratification of the Rome Statute of the International Criminal Court.
2. Welcomes the provision of Article 3 par. 4 of the draft dealing with more protective instruments, and the importance to maintain the definition enshrined in the Convention on the Protection of all Persons from Enforced Disappearance at its Article 2, according to which enforced disappearance "is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law".
3. Considers also that the overall consistency of the draft with the Rome Statute ought to be paramount, for the sake of effective co-operation between States Parties in the criminal prosecution of these crimes, and to preserve the developments of international criminal law related to the protection of victims of gross violations of international human rights law and serious violations of international humanitarian law.

4. Recalls that it is its duty, as a treaty body, to deliver a legal interpretation of the provisions of the Convention on the Protection of all Persons from Enforced Disappearance, on the basis of Article 37, as it was done publicly on the issue of military justice, in a substantial statement adopted at its 8° session (A/70/56, annexe III) and regrets the setback which is made by the ILC watering the international guidelines on this matter.
5. Underlines the centrality of the rights of victims which deserve a specific and substantial article in the draft and regrets that the draft is still so weak on the rights and guaranties already enshrined in Article 24 of the Convention on the Protection of all Persons from Enforced Disappearance, as a victim-oriented instrument and in international guidelines ;
6. Considers that the gap introduced by the International Law Commission in the draft about the issue of immunities is prejudicious to consistency of principles invocated in its Preamble and that the International Law Commission ought to deliver strong safeguards in this matter, according to the principles of Nuremberg and the provisions of the Rome Statute.
