

Resumed session – Crimes against humanity (Cluster 2)

Statement of Italy

Delivered by Mr Enrico Milano

More specifically, we note that the definition under Article 2 contains the key requirement that the attack is made in pursuance or in furtherance of a State or organizational policy, which is one of the key features of the case law elaborated by international courts and tribunals. As well expressed in the Commentary to Article 2 that does not require that the offender be a State official or agent. In fact crimes

by-case evaluation, where all relevant factors will have to be taken into account, including the capacity of the State to exert control and influence over a group of persons that are likely to commit or are committing crimes against humanity. Paragraph 2 also contains the important element that crimes against humanity are not necessarily committed in the context of an armed conflict.

Finally, with regard to Article 4, Italy would like to note the following.

The obligation of prevention refers to positive actions both in the territory under the jurisdiction of the State through appropriate legislative, administrative or judicial measures and in international relations through international cooperation involving other States, international organizations or, where appropriate, other organizations such as the International Red Cross. The requirement that such actions must be

of crimes against humanity internally shall not involve the violation of fundamental human rights and externally does not justify measures, which are beyond the limits imposed by international law, including with regard to use of military force.