



efforts to tackle such crimes. Nevertheless, we wish to underline that the proposed rules, concepts and mechanisms should be established with utmost diligence, in an unhurried manner and full clarity. Crimes against humanity have highly political nature as well, by definition involving state officials. It poses the risk to be exploited for political reasons. This risk is especially embedded in draft article 7 ("*Establishment of national jurisdiction*") which encourages states to exercise extra-territorial jurisdiction. We are of the view that the provision should further be analyzed and prudently drafted.

As the international tribunal decisions cited in the commentary clearly indicate and as expressed by the members of the Commission, the definition and components of crimes against humanity are complex in many dimensions. Moreover its key requirements, such as

and *izational* that are dealt with in draft article 3, as well as the criteria governing responsibility of military commanders and superiors, contained in draft article 6, are ambiguous. Furthermore, as pointed out in paragraph 26 of the commentary on draft article 3, one of those terms could be perceived synonymously with another even by judicial authorities. As underlined by the Commission the case-law of the International Criminal Court is also evolving in this respect. Hence we encourage further debate on the fundamental issues prior to other mainly procedural aspects.





limiting to certain types. On the other hand, we are of the view that the Article requires further clarification for the following reasons:

As opposed to the commentary in which it is explicitly said that states are the obligator to provide redress, we would like to draw your attention that there is no clear reference in the draft article itself to the state being responsible for damages. As a matter of fact, with regard to state liability for moral and material damage, we are of the opinion that since individuals can only commit this crime, and be criminally responsible, the civil liability should in the first place be imposed on them. Accordingly, the provision should be redrafted as to give rise to a secondary obligation for States to make reparation if and when that the victims can not get reparations from the offender. In doing so, the Commission should also dwell on the question as which of the following states would be obliged to provide reparation, in case the offender of the crime who is national of one state commits the crime in a second state against nationals of third stat

The memorandum provides a valuable source of information on



Apart from this, in the light of the foregoing huge differences, it seems not to be viable to determine some ideal rules which can foresee and cover all future aspects, newly developed technics, subsequent priorities of states, and characteristics of all specialized courts, and it appears to be very far fetched, or to take a long time to reach an agreement on a standart body of law regarding evidence for the vast majority of states. Even if it is achieved to a considerable degree, at the end of the day specific needs and concrete conditions will shape the final scope of the content of a specific treaty of the international court or tribunal. In this regard, we are hesitant whether the topic could contribute towards avoidance of fragmentation of procedural law.



