



PHILIPPINES

CHECK AGAINST DELIVERY

STATEMENT

Permanent Mission of the Republic of the Philippines to the United Nations
Agenda Item 83: Crimes Against Humanity (*Cluster I -Preamble and Article 1*)

Sixth Committee

Resumed 77th Session of the United Nations General Assembly

10 April 2023, 10:00 AM

UN Headquarters New York

Thank you, Chair.

The Philippines is grateful for this resumed session and the opportunity for states to further deliberate on the substantive aspects of the Draft Articles on Crimes Against Humanity.

When the draft articles on the prevention and punishment of crimes against humanity was first introduced into the agenda of the Sixth Committee, we joined delegations in recognizing the work of the International Law Commission (ILC), and cited the Draft Articles as ‘an important contribution to the international community’s collective efforts to deter and curtail atrocity crimes’.

For the Philippines, as matter of state policy, “the most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.”

We have also flagged certain concerns raised during our previous deliberations, including by other states, on state sovereignty, overbroad assertions of jurisdiction, politicization of human rights, as captured in the relevant summary records. Hence, we have expressed the view that the question of the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the Draft Articles needs further examination both by Member States on a national level, and by this Committee. We view this resumed session as providing exactly that opportunity for examination and meaningful engagement.

First, on the preambular provisions, the Philippines would like to share the following views:

1. In general, the preambular provision tracks closely the language of the Rome Statute of the International Criminal Court, for instance:

- PP1 which reads:

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556 FIFTH AVENUE, NEW YORK, NY 10036 • TEL. (212) 764-1300 • FAX (212) 840-8602

“Mindful that throughout history millions of children, women and men have been victims of crimes that deeply shock the conscience of humanity,” tracks closely PP2 of the Rome Statute.

- PP2 which reads:
‘Recognizing that crimes against humanity threaten the peace, security and well-being of the world,’ also tracks closely PP3 of the Rome Statute.
- PP6 which reads:
‘Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,’ tracks closely PP5 of the Rome Statute.
- PP8 which reads:
‘Recalling that it is the duty of every State to exercise its criminal jurisdiction with respect to crimes against humanity,’ tracks closely PP6 of the Rome Statute

We note that preamble defines the treaty’s context and objectives and, in certain cases, the supplemental character of preambular provisions can fill gaps that might exist elsewhere in a treaty or an agreement. Article 31 of the 1969 Vienna Convention on the Law of Treaties states that "the context for the purpose of the interpretation of a treaty shall comprise", in particular, "the text, including its preamble and annexes". Thus, the determination of the meaning of a particular provision is based on an examination of the treaty text as a whole, including the preamble.

For this delegation, should the Committee decide to adopt these preambular provisions, discussions must provide a distinct context and make clear that we are not merely appropriating these preambular provisions.

2. On the jus cogens or peremptory norm character of crimes against humanity, as noted in PP4 which reads:

Recalling also that the prohibition of crimes against humanity is a peremptory norm of general international law (jus cogens),

As has been noted, the International Law Commission (ILC) is not the first to have made the conclusion that crimes against humanity are of jus cogens nature. This delegation takes this opportunity to recall the ILCs important work on the identification of jus cogens: (1) it is a norm of general international law; and (2) it is accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.’

To the extent that these criteria are met, the Philippines can support the inclusion of PP4.

3. On international cooperation in PP10, we are ready to support stronger language, including based on what is present in similar conventions, such as the Convention on Genocide, which explicitly states that ‘international co-operation is required.’

Second, on Article 1 on the Scope of Application, the Philippines supports the current language on the scope with the understanding that draft articles are meant to apply in two parts: prevention and punishment. Thus, prevention of crimes against humanity is focused on precluding the commission of such offences, while punishment of crimes against humanity is focused on criminal proceedings against persons after such crimes have occurred or when they are in the process of being committed.”

Finally, as a general statement, we reiterate that if the present draft articles were to become the basis of a legally binding Convention, then the Philippines would have complied with the fundamental obligation contained in draft Article 6 on criminalization under national law, that is, that each state shall take necessary measures to ensure that crimes against humanity constitute offences under its criminal law.

As early as 2009, we passed into law the ‘Philippine Act on Crimes against International Humanitarian Law, Genocide and Other Crimes Against Humanity’. The said law defines “crimes against humanity”, based on a list of acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. The acts listed include, inter alia, willful killing, extermination, torture, prosecution, and other inhumane acts of a similar character.

Further, as an instance of state practice, there are elements in the Philippine law that are of value in relation to ILC’s mandate for the progressive development of international law and its codification. The law includes a substantive chapter on the protection of victims and witnesses, in particular, reparations for victims. The law also specifies the applicability of international law, including relevant agreements that the Philippines may ratify or accede to.

Thank you. **END**