



Crimes against Humanity – Cluster 1

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Statement by H.E. Mohan Pieris, Permanent Representative of Sri Lanka to the UN

Madam Chair, thank you for giving me the floor.

Mr. Chairman May I congratulate you on your re-assumption of the chair. My grateful thanks and good wishes go out to our co-facilitators.

During the last century, millions of human beings perished as a result of genocide, crimes against humanity, war crimes, and other serious crimes. As envisaged in the preamble to the draft, women, men, and children have been the victims of crimes that deeply shock the conscience of humanity. It is a living reality that we experience in contemporary times. Reality that continues to threaten the peace, security, and well-being of the world. We must take cognizance of the fact that international law on this matter is embodied in the charter of the United Nations. We must take cognizance, as some academics say that it is a peremptory norm that must be given primacy of place whilst other academics think it does not have jus cogens status. We have to concede that perpetrators deserving of prosecution have only rarely been held accountable. It is observed that the preamble presents a broad reflection of contemporary international criminal law, similar to the preamble to the Rome Statute, which is mindful that all people are united by common bonds. We must, however, appreciate that this approach has many shortcomings particularly that the idea of a one size fits all distinction between international and domestic offenses gets very complicated. This is one area that I believe needs to be carefully considered.

We must stand firm on the footing that to stop this cycle of violence and promote justice, impunity for the commission of serious crimes must yield to accountability. We know that that is easier said than done. But how can this be done, and what will be the respective roles of national courts and international tribunals is another aspect that we need to give our minds to.

International law describes an international crime as an act that international law deems universally criminal. The international law requirement is what distinguishes an international crime from a domestic crime. Although some acts that qualify as domestic crimes are universally

Criminal they are universality is not derived from international law but from the fact that every state in the world has independently, decided to criminalize them.

National courts administer systems of criminal law designed to provide justice for victims and due process for accused persons. A nation's courts exercise jurisdiction over crimes committed in its territory and proceed against those crimes committed abroad by its nationals or against its nationals, or against its national interests. When these and other connections are absent, national courts may nevertheless exercise jurisdiction under international law over crimes of such exceptional gravity that they affect the fundamental interests of the international community as a whole.

It must be appreciated that universal jurisdiction is a jurisdiction based solely on the nature of the crime. National courts can exercise universal jurisdiction to prosecute and punish, and thereby deter, heinous acts recognized as serious crimes under international law. When national courts exercise universal jurisdiction appropriately, in accordance with internationally recognized standards of due process, they act to vindicate not merely their own interests and values but the basic interests and values common to the international community. Universal jurisdiction holds out the promise of greater justice, but the jurisprudence of universal jurisdiction is disparate, disjointed, and poorly understood. So long as that is so, this weapon against impunity is potentially beset by incoherence, confusion, and, at times, uneven justice.

Mr. Chairman international crimes, sometimes are called core crimes, they are crimes such as war, crimes, crimes against humanity, genocide, and aggression. we now see the crime of torture being added to the list we have also seen controversial matters from Terrorism to Crimes against the environment and corruption it must, however, be appreciated that criminalization of these offenses is not merely about which of these specific acts warrant the status of international crimes, we must realize that it also involves what treating them as international crimes would entail. What are the defining features what it is that warrants a special treatment of these offenses, what is the international component that we need to have, is it some sort of transnational crime. We need to distinguish these features and appreciate the distinction.

International criminal tribunals also have a vital role to play in combating impunity as a complement to national courts. In the wake of mass atrocities and of oppressive rule, national judicial systems have often been unable or unwilling to prosecute serious crimes under international law, so international criminal tribunals have been established. Treaties entered into in the aftermath of World War II have strengthened international institutions, and given greater clarity and force to international criminal law. A signal achievement of this long, historic process

occurred at a United Nations Conference in July 1998, when the Rome Statute of the International Criminal Court was adopted. When this permanent court becomes effective, the international community will acquire an unprecedented opportunity to hold accountable some of those accused of serious crimes under international law. The jurisdiction of the International Criminal Court will, however, be available only if justice cannot be done at the national level. The primary burden of prosecuting the alleged perpetrators of these crimes will continue to reside with national legal systems.

Enhancing the proper exercise of universal jurisdiction by national courts will help close the gap in law enforcement that has favored perpetrators of serious crimes under international law. Fashioning clearer and sounder principles to guide the exercise of universal jurisdiction by national courts should help to punish, and thereby deter and prevent, the commission of these heinous crimes. Nevertheless, the aim of sound principles cannot be simply to facilitate the speediest exercise of criminal jurisdiction, always and everywhere, irrespective of circumstances. We must be guarded against improper exercises of criminal jurisdiction, including universal jurisdiction, as it may be used merely to harass political opponents, or for aims extraneous to criminal justice as in politics and misuse of law. What is needed are principles to guide, as well as to give greater coherence and legitimacy to, the exercise of universal jurisdiction. These principles should promote greater accountability for perpetrators of serious crimes under international law, in ways consistent with a prudent concern for the abuse of power and a reasonable solicitude for the quest for peace.