



Crimes against Humanity – Cluster 3

11 April 2022

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

Madam Chair,

Thank you for giving me the floor. Today we focus on articles 6,7,8,9 and 10 of the drafts that have been presented to us. We deal with certain important aspects of crimes against humanity, its prevention and the enforcement of sanctions. The criminalization under national law, though onerous for states we must concede as very comprehensive.

It is observed that the draft articles do not seek to be overly prescriptive and appear to strike a reasonable balance by enabling States to retain flexibility in how to implement the treaty's crimes against humanity provisions in a way that considers their legal system and their practice. The draft does not preclude States from having more detailed legislation if they wish. It was also noted that the Commission did not, consistent with its well settled practice, clearly indicate in this draft which elements of the draft text were codifying international law, and which represented the progressive development of international law.

The provisions relating to the establishment of competent national jurisdiction are admittedly a salutary feature and perhaps would lighten the burden of a centralized court. The provisions with regard to the investigation though brief, request states to ensure that its competent authorities put in place a special competent mechanism to deal with these complex issues. Then we have in article 9 the measures that are required to be taken when an offender is present in particular jurisdiction which I believe is a salutary provision which does not give safe heavens for suspected criminals concerned in crimes against humanity and finally in article 10 we have the principle of aut-dedere aut judicare extradite or surrender. I presume that all these procedures that are set out in this article is subject to the procedures established by the local laws and that one recognizes the possibility that non of these procedures might bear fruits for good reason. We must give the local jurisdiction to work and not give way to often misplaced view that there is only one-fit for all mankind. The underlying principle in this cluster of articles appears to be the object of ensuring that crimes against humanity constitute offenses, to preclude certain defenses or any statute of

limitation and to provide for penalties that are proportionate with the crime. It is noted that states are required to establish jurisdiction over the offences covered and when crime occurs in any territory under its jurisdiction. It is also noteworthy that the article seeks to address a situation where there is reasonable ground to believe that crimes against humanity have been committed and that an investigation be commenced to find out whether the crime has in fact been committed and if so government forces under its control committed the crime or whether the forces under another state or whether non state actors committed such crime. One does not need to wait for a water tight case to bloom. It is clear that the burden that is cast on the state in these circumstances is no different to the burden cast on states with established criminal procedure, of a democratic state of investigating a transaction that gives rise to a reasonable suspicion of an offence being committed. The provision to take a person within jurisdiction into custody to enable extradition or surrender proceedings is again salutary. More particularly as it addresses the possibility of further criminal acts being committed or the risk of flight and to prevent any interference with the investigation. This again I presume would be in terms of the procedures established by law at particular jurisdiction. And finally we have the principle of extradition or surrender or the submission to countries' competent authorities for the purposes of Prosecution which sends a clear message to those engaging in crimes against humanity that they will not be permitted to be fugitives from justice.

A crimes against humanity as we know is a wide spread or a systematic against a civilian population. It is a problems that had repeated itself through history and continues to occur in the present world. How countries that are in positions of power should or should not respond to these crimes is surely controversial and for that reason differ in opinion. Some proponents say that nations should act according to their own national interest and do what is best for their country. Sometimes choosing not to do anything at all. Others believe that countries that are in such positions of power and have the capacity to use their resources should intervene even by a military strict approach on the basis that crimes against humanity should not be tolerated all. Yet and other view is that in a crisis situation a joint effort by an international community such as the United Nations should mediate and endeavour to resolve the conflict. One could surely appreciate that this method circumvents the possibility of individualizing countries and create an international effort. We know that over the courts of history many diverse actions have been taken in response to a crime against humanity and this present effort that we are engaged in is surely a step in the right direction. This effort is surely a pragmatic move. In the face of never ending critique of international criminal law has been imperial or selective or individualistic or culturally tone- deaf. The critic of critiques can respond simply by saying that this endeavour seeks to reduce human suffering or improve the human condition in some fairly basic ways and as one academic (the writer Vendy Brown) observes this is the most we can hope for. Thank you.