



United Nations General Assembly | Sixth Committee
Crimes against humanity
14 October 2020

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Mr. Chairman,

At the outset, Brazil would like to express its appreciation to the International Law Commission for its work on the topic of crimes against humanity. Since the inclusion of this topic in the ILC program of work, the Commission has been devoted to an extensive exercise that engaged not only its members, but also governments, international organizations and others. The result was a well-crafted product that provides a good basis for negotiating a convention on the matter.

Convinced of the need to address the gap in the existing international law framework, Brazil has supported this process since its inception, including by providing constructive comments to the set of draft articles. We have noted that the Rome Statute of the International Criminal Court inspired much of the draft articles, which is generally advisable as a means to ensure consistency within the international law system.

In its comments to the draft articles, Brazil suggested that their preamble should include a reference regarding the general prohibition under international law on the use of force. Even though we would have favored an explicit reference to it, we have positively remarked that the commentaries to the articles, when recalling the principles of international law embodied in the UN Charter, mention that States shall refrain in their international relations from the threat or use of force. The major goals of preventing and punishing crimes against humanity must be undertaken in conformity with international law, including the principles enshrined in the UN Charter.

Another comment that Brazil wished to see reflected in the final ILC product refers to issues of jurisdiction. While there is no doubt on the need to ensure that crimes against humanity do not go unpunished, the means to attain this goal might deserve further debate, taking into account the developments of international law and institutions. The ILC work on crimes against humanity seeks to fulfill a gap in the international system, which already relies on global conventions to prevent and punish genocide and war crimes. Differently from the Genocide Convention or the Geneva Conventions and related protocols, which entered into force before the existence of the International Criminal Court, the draft articles on crimes against humanity are subsequent to the establishment of the Rome Statute system. As a consequence, its provisions must strengthen that system, including by prioritizing the jurisdiction of the International Criminal Court when the custody state has no nexus with the crime, the suspects or the victims. Furthermore, the draft articles would benefit from the addition of safeguards to prevent the abuse of the universality principle, such as a provision giving jurisdictional priority to states with the closest links to the crimes.

Mr. Chairman,

After five years of extensive work on the topic, the ILC recommended the "elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles". Brazil joins the large number of States that favor the elaboration of such Convention. The set of draft articles presented to us by the International Law Commission constitutes a good basis to guide our discussions.

The Sixth Committee has an unfulfilled task, which is to agree on a structured process towards drafting a convention that could be universally ratified. For that, it is imperative to prioritize a format that provides the legitimacy and inclusiveness needed to the discussions. Brazil is ready to engage in this exercise, and to work constructively towards a consensual process that may ultimately lead to a convention on crimes against humanity.

Thank you