



United Nations General Assembly | Sixth Committee

**Crimes against humanity
(Agenda item 83)**

13 October 2021

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Madam Chair,

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

Convinced of the need to bridge 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. This ensures its consistency within the international law system.

In its comments, Brazil has suggested that the preamble of the draft articles should include a reference from the Rome Statute on 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 mention that States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. The major goals of preventing and punishing crimes against humanity must be undertaken in conformity with international law, including the general prohibition to the use of force.

Another comment that Brazil had wished to see reflected in the final ILC product refers to issues of jurisdiction. While there is no doubt on the need to ensure accountability for crimes against humanity, the means to attain this goal must take into account international law developments and the environment in which it operates. The ILC work on crimes against humanity seeks to fulfill a gap in the international system, which is already based on global conventions to prevent and punish genocide and war crimes. Differently from the 1948 Genocide Convention or the 1949 Geneva Conventions and their additional 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 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.

Madam Chair,

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 of drafting a convention that could be universally ratified. For that end, it is imperative to prioritize a negotiation framework that provides the legitimacy and inclusiveness needed to the discussions. Brazil is ready to engage in this exercise, and to work constructively towards a process that may ultimately lead to a convention on crimes against humanity.

Thank you.