



**Statement by H.E. Archbishop Bernardito Auza  
Apostolic Nuncio, Permanent Observer of the Holy See,  
74<sup>th</sup> Session of the United Nations General Assembly, 6<sup>th</sup> Committee on agenda item  
79: Report of the International Law Commission**

*CLUSTER I – Chaps: I, II, III, IV (Crimes against humanity), V (Peremptory norms of general international law (jus cogens), VI (Protection of the environment in relation to armed conflicts) and XI (Other decisions).*

**New York, 28-29 October 2019**

Mr. Chair,

It is a matter of great concern for us all that the world continues to be scarred by political, religious and ethnic violence. The fear of being beaten, killed, enslaved, raped, exiled, or sold into forms of contemporary slavery due to political, religious and ethnic affiliations remains real and present for many. Crimes against humanity must be condemned and efforts at all levels aimed at relegating such crimes to the pages of history must be given due priority.

The principle of *aut dedere aut judicare* sets out the legal responsibility of all States to prosecute crimes against humanity within their borders and to cooperate with each other and with the relevant intergovernmental organizations in this task, which may require, when appropriate, the extradition of wrongdoers, as well as to provide assistance to victims.

In this context, the Holy See welcomes the text of the “draft articles on prevention and punishment of crimes against humanity” prepared by the International Law Commission as well as its decision to recommend to the General Assembly the elaboration of an International Convention, on the basis of those draft articles, by the same General Assembly or by conference of plenipotentiaries.<sup>1</sup> As my Delegation has stated in the past, the Holy See supports the work aimed at the elaboration of such a Convention and will engage constructively in the negotiations.

Looking closely at the text proposed by the ILC, we welcome, in particular, draft article 5, concerning the principle of *non-refoulement*. Certainly, no person should be returned to a

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<sup>1</sup> Cf. International Law Commission, Report on the work of the 71<sup>st</sup> session (2019), Ch. 4, p. 10, 42.

place where he or she may be subjected to crimes against humanity. Refugees and migrants fleeing persecution should be welcomed, protected, helped and integrated.

On the other hand, we believe that the elaboration of the new convention should focus squarely on codifying existing customary law and promoting international cooperation. Adding or modifying the already agreed definition of the crimes, before State practice and *opinio iuris* have fully developed, would not be conducive to a broad consensus. In that context, my Delegation regrets the decision of the ILC to not include in the draft articles the definition of “gender” contained in paragraph 3 of article 7 of the Statute of the International Criminal Court, which forms an integral part of the definition of the crimes as agreed during the Rome Conference. Moreover, the sources mentioned in paragraphs 41 and 42 of the ILC’s commentary on the definition of the crimes do not constitute State practice and do not provide any evidence of States’ *opinio iuris*.<sup>2</sup>

As work towards a possible Convention continues, my Delegation suggests that the following two issues be kept in mind:

First, the new Convention should give all people an opportunity to seek justice and to have their voices heard on an international level, especially those under threat of these crimes. Through increased international collaborative efforts to prevent future crimes of this sort, assisting in recovery and rescue efforts, and working to bring those who would commit such crimes to face justice, the threats of crimes against humanity can be eliminated.

Second, the future Convention must provide for the need to assist States with fragile or weak judicial and security systems, in particular as regards protecting racial, ethnic or religious minorities living within their borders. Such nations may also need assistance in developing the ability to provide judicial and extra judicial protection and remedies to the victims. Without effective domestic institutions, the prevention and prompt cessation of crimes against humanity when they happen would be next to impossible.<sup>3</sup>

My Delegation would like to conclude by encouraging international actors to commit themselves to act in the timeliest manner possible to prevent violence and to act decisively to stop atrocities at their onset. In addition to new legal instruments, we need to strengthen further the preventative diplomacy mechanisms and early warning systems so as to prevent the commission of crimes against humanity and other mass atrocities.

Thank you, Mr. Chair.

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<sup>2</sup> International Law Commission, Report on the work of the 71<sup>st</sup> session (2019), Ch. 4, pp. 45-46.

<sup>3</sup> Cf. Report on the work of the 71<sup>st</sup> session (2019), Ch. 4, p. 81, 9.