



PERMANENT MISSION OF CUBA TO THE UNITED NATIONS
315 Lexington Avenue, New York, N.Y. 10016 (212) 689-7215, FAX (212) 689-9073

STATEMENT BY THE CUBAN DELEGATION AT THE SIXTH COMMITTEE
ITEM 84 “CRIMES AGAINST HUMANITY”
New York, 13 October 2021

Mr. Chairman,

We appreciate the work carried out by the International Law Commission in order to present draft articles on this topic.

Cuba is a historic defender of the respect for international law and its principles, especially international criminal law.

The fight against impunity for crimes against humanity is of paramount importance and transcendence within the current international context. Therefore, Cuba considers that the draft articles prepared by the International Law Commission are a valid contribution to the efforts to materialize the international prevention and punishment of these types of crimes and will

contribute to the efforts to strengthen the international criminal justice system.

Similarly, it also provides useful guidance for States that have not yet adopted norms related to the criminalization and prosecution of such crimes at the national level.

Cuba recognizes the effort made by the Special Rapporteur to take into account various national and regional approaches in order to enrich the draft articles and contribute to international consensus. However, there are still many doubts regarding the contents of the formulations presented.

At the same time, we consider it appropriate to reiterate that in a Convention on this issue it should be reflected, as a fundamental principle, that the primary responsibility for preventing and punishing serious international crimes committed under its jurisdiction should lie, in the first place, with the State in question.

This principle must be part of the contents of the substantive provisions of the Convention, beyond the fact that it may be mentioned in the preamble.

One of the cardinal principles of international criminal law relates to the fact that States have the sovereign right to exercise, in their national courts, jurisdiction over crimes against humanity committed in their territory or by their nationals. This principle is based on the fact that no one is in a better position to effectively prosecute the perpetrators of such offenses than the State with jurisdiction on grounds of the territory or the nationality of the accused or the victims.

Only when States were unable or unwilling to exercise jurisdiction over these crimes, the application of other prosecution mechanisms should then be considered.

Mr. Chairman,

Given the substantive concerns that still exist in relation to the draft articles submitted, the Sixth Committee should continue to consider this topic on the basis of the States' commentaries, and in the format of a working group that meet during the main segment of its session. It is worth recalling that among the concerns that still remain is the issue of the definition of crimes against humanity used in the draft articles, which is based on the one, contained in the Rome Statute of the International Criminal Court, despite the fact that several countries have not signed this instrument.

This discussion will yield practical benefits to our work towards a possible international convention, which should not come into conflict with the national legislations applicable to crimes against humanity.

Only in this way will it be possible for a future Convention to gain broad acceptance by the international community and for its drafting to take into account the differences between the various existing national legal systems, including that of the

States that are not parties to the Rome Statute of the International Criminal Court.

Such Convention should also avoid conflicts with international instruments already adopted, in order to ensure consistency with the current norms and institutions of international criminal law, as well as to avoid regulatory dispersion on this issue in the international system.

We do not see the urgency in the accelerated adoption of this draft without a prior exhaustive study of its contents, through the methods traditionally employed by the Commission, as is the case of the working groups that meet during the main segment.

On the other hand, there are international instruments in force on this topic, to which should be added the recent launching of a parallel initiative for the elaboration of a convention on international cooperation to investigate and prosecute the crime of genocide and war crimes and crimes against humanity. In this regard, we believe that there are significant overlaps between the draft convention and

the draft articles. In this connection, and given the current uncertainty, we prefer not to rush the launching of a new and complex negotiation.

In closing, we reiterate that the binding force of this type of instrument derives from the consent of States in the international law formation process. We cannot consider the ILC, *per se*, as a kind of legislative body responsible for establishing rules of international law. Its valuable contribution has been to document the issues on which States have elaborated rules of relevance to international law and to propose those matters on which States would be in a position to assess and accept. In this respect, the elaboration of these draft articles is not an exercise of customary international law codification, but an effort in the continuing development of the law.

Thank you very much.