



PERMANENT MISSION OF CUBA TO THE UNITED NATIONS
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STATEMENT BY THE DELEGATION OF CUBA AT THE SIXTH COMMITTEE
ITEM 84 "CRIMES AGAINST HUMANITY"
New York, 10 October 2022

Mr. Chairman,

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

The fight against the impunity of 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 international prevention and punishment of these types of crimes, which should contribute to the efforts to strengthen the international criminal justice system.

We appreciate the work carried out by the ILC in the elaboration of the draft articles on this topic. This provides useful guidance for States that have not yet adopted norms related to the criminalization and prosecution of such crimes at the national level. We also recognize the efforts 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, we reiterate our concerns regarding the content of the formulations presented.

We consider it appropriate to reiterate that a Convention on this matter must reflect, as a fundamental principle, that the primary responsibility for preventing and punishing serious international crimes committed under its jurisdiction must lie, in the first place, with the State in question.

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 are 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 with respect to the draft articles submitted, the Sixth Committee should continue to consider this topic on the basis of the States' comments, and in the format of a working group that meets during the main segment of its session. It is worth recalling that among the

remaining concerns is also the issue of the definition of crimes against humanity used in the draft articles, which is based on that contained in the Rome Statute of the International Criminal Court, despite the fact that several States 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 be widely accepted 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.

Said Convention should also avoid conflicts with international instruments already adopted, in order to ensure consistency with current norms and institutions

of international criminal law, as well as to avoid regulative dispersion on this issue in the international system.

Mr. Chairman,

We do not see the haste in the accelerated adoption of this draft without a thorough prior study of its content, 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 such as the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 1968, which includes extradition. It should be noted that there are only 56 States Parties to this Convention and the last State to accede to it did so as early as 2020. Many of the countries that are today raising the need for a

Convention on Crimes against Humanity have not even signed this instrument.

At the same time, we believe that there are significant overlaps between the draft convention and draft articles. In this connection, and given the current uncertainty, we prefer not to rush the launching of a new and complex negotiation.

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 sort of legislative body in charge of establishing rules of international law. Its valuable contribution has been to document the issues on which the States have prepared 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 draft articles is not an exercise of customary international law

codification, but rather an effort in the continuing development of law.

Mr. Chairman,

Finally, we wish to emphasize the importance we attach to preserving the Commission's longstanding practice of adopting our decisions by consensus. To deviate from this practice would only jeopardize the possibility of the texts produced becoming universal treaties.

Thank you.