



## **Crimes against Humanity – Cluster 2**

**11 April 2022**

### **Statement by H.E. Mohan Pieris, Permanent Representative of Sri Lanka to the UN**

Madam Chairman, I will be remiss in my obligations, if I was not to congratulate the craftsman of this draft, who has been bold enough to engage in a very onerous task of capturing in a document, the important features of the crimes against humanity about which there is so much fluidity. What we need to bear in mind is that it is a good working draft that has to be nourished and molded over a period of time into one that is as perfect as it could be, having regard to the growing body of contemporary international law.

In considering the definitions of crimes against humanity I thought we need to give some thought to the process of attributing conduct which labels someone *hostis generis humanis*, meaning 'enemies of humanity' for the reason that this classification rises from the substantive character of the evils the criminal inflicts. The expression *hostis* is substantive, and not jurisdictional, say the academics. Therefore, it gives rise to ambiguity; the first ambiguity that we identify is whether the expression is substantive or jurisdictional as a concept. The academics seem to suggest that the word enemy is 'war' talk, not 'law' talk. They say that crime is 'law' talk. The third possibility they say that such *hostis* is to be treated as neither adversary nor criminal and therefore is not entitled to the rights of belligerents or criminal defendants, what then are they then entitled to; punishment, or extermination. We are warned that any existing political group that claims to speak in the name of humanity would be acting in a manner repugnant to all tenets of law by denying its enemies the quality of being human; we must take that warning to heart, academia is of the view that in the final analysis we are getting closer towards what Cicero meant; a universal or cosmopolitan community.

Mr. Chairman, the enemy of all humanity is someone who assaults our-nature as political beings through tyrannical and cruel conduct; that it is worth calling him to account. Universal jurisdiction, therefore does not rest on the hostes's location outside of the territorial jurisdiction of states. Establishing such a jurisdiction is what we are engaged in, it is one in which we simultaneously establish a practice of accountability and create norms against radical evil to which anyone, including heads of state may be held to account. The academics put it very succinctly when they say that it is a call to the enemy of all humanity to account before humane law, using fair

procedures, to re-claim him for humanity, and to affirm humanity, in the teeth of extreme evil.

Permit me to turn to articles 2, 3 and 4 of the draft the contents of which we are somewhat familiar. We have a definition which is not exhaustive, we have general obligations which I would say is a stark reminder of what most of us choose to ignore and an obligation to prevent such crimes which we choose to walk away from. The draughtsman having realized this chose to put it down the obvious in black and white.

I would commend to the drafting committee most respectfully that we visit the definition of extermination in A2 (b). This is no more than a thought that the definition which is inclusive is couched in language which is too wide. It appears to be inconsistent with the maxim *eiusdem generis* as the activity contemplated in the inclusive environment does not appear to be of the same generic character. It would appear that what has been contemplated was a situation of a 'blockade' or a 'siege'.

It might be worthy of consideration as to whether the *actus reus* referred to in the inclusive definition be separated and listed as a separate offense.

It is said that once the evil of war has been precipitated nothing remains but the fragile effort to limit the cruelty by which it is conducted. One of the great American scholars Herbert Wechsler observed that of these two challenges no one would deny that the larger offense is the unjustified initiation of a war. This I say has a comparable focus on the crime of aggression in present day international criminal law; an unjustified initiation which should be considered a supreme crime. But we appear to be obsessed with accountability for the atrocity complained of. Genocide has now taken over. Aggression *per se* appears excluded from the discourse other than our minor flirtations with the concept. We cannot miss the transition from aggression to atrocity. I therefore commend we consider the inclusion of aggression as a crime against humanity. We must accept the fact that the prevention of war is one of the principal objectives of International law as enshrined in our charter. Finally, in A2.1.3 I observe a proviso leaving room for broader definitions that may be found elsewhere. Whilst this on the one hand gives us flexibility it also leaves room for arbitrariness. We have to make the law clear, easily understood and predictable if we are to ensure easy efficient affordable access to the laws governing the prevention of crimes against humanity and the rule of law.

I thank the ILC for setting the groundwork for an all encompassing convention.