



**United Nations General Assembly | Sixth Committee**

**Crimes against humanity  
(Agenda item 80)**

October 12<sup>th</sup>, 2023

*(check against delivery)*

Mister Chair,

Brazil believes there is an important gap to be filled in international law regarding the regulation of the prevention and punishment of crimes against humanity. Unlike genocide and war crimes, crimes against humanity are not the object of an international convention to be enforced by domestic courts.

Therefore, Brazil agrees with the recommendation of the International Law Commission on the "elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles". Although there may be room for improvement in certain aspects of the draft articles, they are a good starting point for the launch of negotiations.

After five years of extensive work by the ILC and despite widespread support from States for its results, progress on this topic stalled for over three years. It was another instance of the inability of the Sixth Committee sometimes to take action, no matter its course, on the products of the ILC.

Fortunately, in light of the imperative and urgency to strengthen the international legal framework with regard to crimes against humanity, last year this Committee was able to overcome its disagreements to establish a structured process towards substantive discussions, with no prejudged outcome. An example to be followed. By doing so, we took a step in the direction of helping the ILC discharge its mandate to undertake the codification and progressive development of international law.

April's resumed session allowed us to express our views on the draft articles themselves, to identify its strengths and shortcomings. It helped to clarify what can be consensual and what can be divisive. Brazil looks forward to next year's resumed session, which may assist us in narrowing our differences.

Mister Chair,

Today, Brazil will make a few remarks on the content of the draft articles.

Its Preamble already brings important principles, but it should also refer to the principles of the UN Charter related to the general prohibition of the use force and to non-intervention in the internal affairs of any State. This would dispel fears of misuse of allegations of crime against humanity as a pretext for aggression and intervention, thereby facilitating the negotiation of and wide adherence to a future convention.

As regards the article on the "definition of crimes against humanity", Brazil stands for an approach more on a par with the current human rights concept of gender. In light of the discussions held last April and differences among Member States, we believe it would be a pragmatic decision to avoid the inclusion of what constitutes gender. Leaving for Member States to interpret the meaning of the term in accordance with their national legislations can alleviate concerns that would prevent ratification of a future convention.

It is also important to improve the mental elements of the criminal offence, as "mens rea" should rely on intention and/or knowledge, no matter if the accused are commanders or subordinates. The catch-all formulation on other inhumane acts in article 2, paragraph 1, letter k), may deserve further elaboration, bearing in mind the principle of strict legality, which better suits criminal law.

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.

Brazil is also of the view that an additional provision may be needed according to which nothing in a future treaty could be interpreted as imposing an obligation to Member States to extradite when the person is to appear before an exceptional or extraordinary tribunal. Or when there are reasonable grounds for believing that the person may face penalties contrary to the foundations of their legal system.

Mister Chair,

History has shown that the most serious crimes of concern to the international community can be intertwined with the apparatus of States. The individual and State responsibilities thus become complementary. One does not exclude the other; on the contrary, both need to be equally upheld so as to combat impunity and to strengthen international law.

An international convention on crimes against humanity would provide the international community with an invaluable tool to

ensure that such hideous deeds can be prevented and will not go unpunished.

Thank you.