



Statement by H.E. Archbishop Gabriele Caccia
Apostolic Nuncio and Permanent Observer of the Holy See
UNGA 78 – Sixth Committee
Agenda item 80: Crimes against humanity
New York, 12 October 2023

Mr. Chair,

Since our last consideration of this agenda item, regrettably numerous crimes against humanity have been committed, causing unspeakable suffering and violating human dignity. This fact underscores the need for urgent and effective action to prevent and punish such crimes.

It is beyond question that existing customary law already prohibits crimes against humanity. Indeed, as noted by the International Law Commission, the prohibition of these acts is a peremptory norm of international law. Nonetheless, the conclusion of a universal, multilateral treaty that would codify existing customary law would certainly promote international cooperation for the prevention and punishment of these crimes.

Mr. Chair,

The Holy See is of the view that any definition of crimes against humanity must be rooted in existing customary international law. Adding to or modifying the already agreed definition of such crimes, before State practice and *opinio iuris* have fully developed, would not favor a broad consensus, while eroding the effectiveness of the system.

For States Parties to the Rome Statute, in particular, maintaining a consistent definition of crimes against humanity would ensure legal coherence and strengthen complementarity. Conversely, attempting to modify already the agreed definition of crimes, over objections by States, would not only undermine efforts to achieve consensus, but would also undermine the coherence and effectiveness of international law.

With that in mind, the Holy See cannot share the ILC's proposal to exclude the definition of "gender" from the draft of Article 3. This definition, as contained in the ICC Statute, forms an essential and integral component of the previously agreed definition of crimes against humanity, reflects the established international custom and received widespread support at the Rome Conference. My delegation also notes that the sources referred to in paragraphs 41 and 42 of the ILC's commentary on the definition of the crimes do not constitute State practice or provide evidence of the *opinio iuris*. It is in fact imperative to maintain an accurate view of human nature when addressing those crimes that disproportionately affect women and girls, such as rape, sexual slavery and prostitution.

Mr. Chair,

Efforts to prevent and punish crimes against humanity must respect, on the basis of the principle of complementarity, the sovereignty of other States and should not interfere in their domestic affairs. Any new convention should therefore follow well-established precedents, building on the duty of States Parties to prosecute crimes within their own borders and to cooperate with each other in extraditing perpetrators and in providing assistance to victims.

The new Convention should also ensure that the victims have the opportunity to seek justice and to have their voices heard. In this regard, the Holy See welcomes Article 12 paragraph 2 of the ILC's draft. In addition, the future Convention should encourage assistance to fragile or weak judicial and law enforcement systems.

Moreover, in order to effectively prevent and punish crimes against humanity, adequate national and international measures to facilitate judicial cooperation are needed. We therefore welcome the provisions of Article 14 of the draft, which addresses this crucial aspect.

The Holy See also expresses its support for draft Article 5, on the principle of *non-refoulement*. Certainly, no person should be returned to a place where he or she may be subjected to crimes against humanity. Similarly, no person shall be extradited to a jurisdiction where he or she might be subject to torture or the death penalty.

Finally, it is necessary to reflect on the interaction between the ILC draft and the recently concluded *Ljubljana - The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes And Other International Crimes*. While this convention, agreed upon by a group of willing States, has indeed some significance, it cannot substitute a universally accepted consensual legal instrument crafted within the UN framework.

Thank you, Mr. Chair.