



**United Nations General Assembly | Sixth Committee
78th Resumed Session**

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

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(check against delivery)

Mr./Madam Chair,

I thank the Secretariat and the Members of the Bureau for organizing this session. Brazil co-sponsored Resolution 77/249 and is glad to be able to participate once again in substantive discussions about the International Law Commission's draft articles on prevention and punishment of crimes against humanity.

We reiterate that the Brazilian delegation engages in the discussions of this session on the understanding that its views will not prejudice the approach it may take during future negotiations on the topic. Brazil still reserves its right to reconsider or complement its opinion on aspects of the draft articles in the future.

Our objective with the comments on the cluster 1 of the draft articles is to create a favorable environment for the negotiation of a convention about crimes against humanity.

We believe that it would be positive if the preamble of a future convention on crimes against humanity incorporates paragraphs on the principles of the UN Charter related to the general prohibition of the use of force and non-intervention in the internal affairs of any State. This could address the concerns already voiced by some delegations that allegations of crimes against humanity might be used as a pretext for aggression and interference in internal affairs of a State.

Thus, a clear reference to those principles of the Charter in the preamble could contribute to universal adherence to a future convention. We must not forget that the future convention should be interpreted by national tribunals in the light of its preamble.

Brazil also welcomes the recognition of the prohibition of crimes against humanity as a peremptory norm of general international law. The jurisprudence of several international, regional - such as the Inter-American Court of Human Rights - and national tribunals corroborates this acknowledgment.

While not all the provisions of the draft articles constitute *jus cogens*, there should be no doubt that no derogation to the

prohibition of such crimes is acceptable. Any caveat in this respect would be inconsistent with the seriousness that international law attaches to crimes against humanity.

We do support the choice made by the International Law Commission and its rapporteur of a preambular paragraph that takes into consideration the definition of crimes against humanity set forth in the Rome Statute. As we stated in our written comments submitted last December, this could contribute to avoid fragmentation of international law. This paragraph is also important to guarantee conformity of the application of a future convention with the principles of complementarity and non bis in idem.

At the same time, we acknowledge that a significant part of the world population lives in countries that are not members of the International Criminal Court and, therefore, are not bound by its Statute.

For the sake of clarity, it would be advisable to preserve the provision on the scope of the draft articles in a future convention on crimes against humanity. Expressly circumscribing their scope to the prevention and punishment of crimes against humanity as set out in draft article 2 would fix clear boundaries for the interpretation and application of all the provisions of a future convention, in its different aspects, by domestic courts.

Moreover, it is Brazil's view that the scope *ratione temporis* of a future convention should be interpreted, given the absence of a provision to the contrary, in accordance with article 28 of the Vienna Convention on the Law of Treaties, on the non-retroactivity of treaties.

I thank you.