



PERMANENT MISSION OF ARMENIA
TO THE UNITED NATIONS

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Mr Chairman,

As expressed in prior statements Armenia supports the principle of the elaboration of a convention on the basis of the International Law Commission (ILC) draft Articles on the Prevention and Punishment of Crimes against Humanity. In the resumed session this week, we wish to dedicate our comments to substantive issues with the aim of identifying a path towards a text that can command wide support.

In general, Armenia is content with the balance in the draft preamble struck by the International Law Commission. Although we consider the question of "competing national jurisdictions" to be a critical one, we consider that it needs to be addressed in draft Articles 7 and 13.

We recognise that paragraph 4 recalling that "the prohibition of crimes against humanity is a peremptory norm of general international law" has been controversial. No equivalent statement appears in the key multilateral treaties to have been concluded since the first reference to peremptory norms of general international law entered into force in 1980, namely: the 1984 Torture Convention, the 2006 International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute. The sensitivity of the issue is underscored by the criticisms made by a number of Member States of the methodology used in the 2022 ILC draft Conclusions on Peremptory Norms of which the General Assembly ultimately "took note" without annexing the text to its resolution after two years of difficult negotiation in the Sixth Committee.

We note that the Special Rapporteur for the project, Mr Sean Murphy, observed: "At issue, therefore, appears to be not the peremptory nature of the prohibition of crimes against humanity, but the appropriateness of including a reference to *jus cogens* in the preamble...[t]he reason for not including such a reference may related, at least in part, to uncertainty as to what consequences flow from such a status". As the preambular reference would form part of the "internal context" of the substantive provisions of a treaty for the purposes of interpretation within the meaning of the 1969 Vienna Convention on the Law of Treaties, the definition of 'crimes against humanity' in Article 2 could be interpreted to mean that no derogation is permitted for any crime included in it.

The peremptory status of the basic definition of crimes against humanity notwithstanding, the question can be posed whether each of the specific acts included in the definition is also peremptory. Although the commentary to the preamble states that "neither it nor the present draft articles seek to address the consequences of the prohibition having such status", it is possible that a more expansive interpretation might be placed upon the preambular reference in the application of the substantive provisions of a treaty than was intended by the International Law Commission.

Acknowledging the sensitivity of paragraph 7, we are also open to the suggestion made by multiple delegations to amend it to "note" the definition of crimes against humanity in the Rome Statute, which is linked to the discussion on draft Article 2.

On draft Article 1, we are content with the provision as written by the International Law Commission. In light of the fact that draft Articles 4(a), 7(a), 8, 9(1), 10, 11(3), 12(3) and 13(1) use the formula "territory under the jurisdiction" of a State, draft Article 1 could refer to the duty to apply the convention within the territory under the jurisdiction of a State. Like other delegations, however, we do not consider this to be a necessity due to the precision with which the aforementioned provisions are drafted. As others have noted, the default rule under Article 28 of the Vienna Convention of the Law of Treaties is that a treaty does not apply retroactively "unless a different intention appears from the treaty or is otherwise established". Although we consider the "object and purpose" of a draft convention to promote mutual cooperation between States for the prevention and punishment of crimes against humanity to be clear in the existing text, we are open to the addition of this reference to draft Article 1 for greater precision.