

*Permanent Observer Mission
of the State of Palestine
to the United Nations*



البعثة المراقبة الدائمة
لدولة فلسطين
لدى الأمم المتحدة

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Statement by Loureen Sayej, Third Secretary, before 78th General Assembly Meeting of the Sixth Committee on Agenda Item 80: Crime Against Humanity (Cluster I):

We align ourselves with the statement delivered by Saudi Arabia on behalf of the Arab Group.

75 years of building an international law edifice to protect the most vulnerable; hold accountable the culpable; and prevent the unthinkable. It led us to today, 75 years **too late**, to try to fill the gap created by the absence of a Convention on crimes against humanity, hoping to prevent their occurrence, to hold their perpetrators accountable, and protect the life and dignity of all.

We recognize that every evolution of international law was linked to a tragedy we failed to prevent; every Convention bore witness to inhumanity we later condemned; and every law was codified to help us identify patterns of atrocities we repeatedly overlooked.

We inherited 75 years of a collective effort to apply the law on those who have attacked the foundations of the world's peace; a collective effort to place the law at the center of our efforts to humanize international relations and prevent the violations of basic rights.

As we negotiate the laws of humanity we are collectively faced with a contradiction undermining our legal consciousness: the humanist rhetoric of law and the principles of equality, universality and humanity all while we are witnessing the most horrific episodes of calculated, methodic, and organized cruelty in modern history by Israel, a Member of the UN, which shamelessly sits in this forum as it is singlehandedly destroying the international law order before our eyes.

The most serious crime, genocide, its prevention and punishment, are enshrined in an existing Convention, and yet it is being committed in Gaza with full impunity and guarantees of continued immunity.

War, famine, conquest, and death are still deemed acceptable by some and the killing of 13,000 children is still declared "collateral damage". What hopes do people of the world have for the international law order? Its universality and efficacy? What can we offer to the victims and survivors? What will our legacy be?

What the Palestinian people are enduring will either become the new normal, replicated across generations, who we promised to but failed to save from the scourge of war, or will be a reckoning that forces us to further commit to our humanity and commit to the law.

We choose the latter. **We will always choose the latter.**

This is why, with infinite pain and unyielding resolve, we reiterate our long-standing position to fighting impunity and our commitment to the objective of a universal Convention to prevent and punish crimes against humanity.

The State of Palestine supported this inclusive and deliberative approach in discussing the draft articles and we are encouraged that this approach will further inform the General Assembly's process to find consensus on a path forward towards a Convention.

The State of Palestine also welcomes the draft articles on crimes against humanity and recognizes the indispensable role of the ILC as it is uniquely placed as the universal body tasked with making recommendations for the purpose of encouraging the progressive development of international law and its codification.

The State of Palestine generally agrees with the ILC's proposed draft articles on prevention and punishment of crimes against humanity and inter-State cooperation and would like to reiterate its positions regarding Cluster I:

1. We are encouraged that the *preamble* is influenced by the Convention on the Prevention and Punishment of the Crime of Genocide and the Rome Statute;
2. We welcome the recognition that crimes against humanity threaten peace, security and well-being of the world. Preambular 1 essentially and rightly stresses the necessary link between the pursuit of justice and the maintenance of international peace and security, echoing the purposes set forth in Article 1 of the UN Charter, as such we suggest adding "and must not go unpunished";
3. The draft articles, and Conventions before them, as well as the entire international justice architecture would not have existed without a vision of justice. As such, and while taking note of the commentary provided in Preambular 3, we are of the view, and given the distinct nature of the draft articles and the crimes therein, that reference principles of justice should also be mentioned, in accordance with Article 1 of the UN Charter;
4. It is important that Preambular 4 recalls that the prohibition of crimes against humanity is not only a rule under customary international law but is also a *jus cogens*, like the crime of genocide, with certain obligations, of which no derogation can be permitted, and with particular consequences. We are of the view that more can and should be done to emphasize the *jus cogens* nature of crimes against humanity throughout the draft articles;
5. While it is important to recall that crimes against humanity are among the most serious crimes of concern to the international community as a whole, it is equally important to recall in Preambular 5 that it entails not only a State obligation in terms of prevention but also a State obligation in terms of investigation, apprehension, prosecution, and punishment;
6. As for prevention, we take note of the commentary that that the draft articles do not seek to address the consequences of the *jus cogens* nature of the prohibition of crimes against humanity, we remind here that like the case for the crime of genocide, third States ought to bear autonomous and distinct duties to prevent and to punish crimes against humanity; such obligations include States to prevent crimes against humanity, so far as within their power, by States whom they have certain influence, must be mentioned throughout the draft articles;

7. We also believe that the prevention should be further strengthened throughout the draft articles, including in Article 6, which we will later discuss;
8. Ending impunity is not only to deter or prevent the commission of these crimes but also to ensure accountability for those who nevertheless do commit them and that should be duly reflected in Preambular 6;
9. There is relatively a limited State practice investigating and prosecuting crimes against humanity at the national level, separate from the Rome Statute. We also recognize that never in the history has the international community come together to define crimes against humanity as we did in the Rome Statute. It is a starting point, it leaves enough room for further discussions among States and to capture other crimes that may be of an interest to the international community;
10. The State of Palestine is a strong supporter of a victim-oriented approach. We welcome the reference to victims and witnesses in Preambular 9. This reference is an explicit recognition of the indispensable role of the victims and witnesses in prevention and punishment of crimes against humanity. We submit, in line with other relevant Conventions and preambles therein, that “the right of victims to reparation”, is one of the purposes of criminal justice and should be included;
11. Indeed, the responsibility to make reparations is inherent in the concept and reality of an internationally wrongful act; they are not a by-product of the wrongful act but a purpose of international justice;
12. We are also supportive of survivor-oriented approach and we reassert that reparations include not only those who most directly suffer crimes against humanity but also subsequent generations who live with the consequences of those crimes;
13. While we support a reference to fair treatment and fair trial in principle, we do not believe it should be addressed in the same paragraph as the rights of victims and witnesses;
14. The State of Palestine attaches importance to ensuring that the proposed draft articles supplement and are complementary to existing instruments. We believe that consistency and building upon existing obligations will only strengthen the international regime to prevent and prosecute crimes against humanity. This will help both in strengthening national response and international cooperation;
15. We note that from a conventional law perspective, the obligations to prosecute or extradite are reflected in the conventions on torture, enforced disappearance, and apartheid- listed as crimes in the proposed Article 2 of these draft articles. Recalling these conventions in Preambular 10 will thus further consolidate the international regime on crimes against humanity;
16. We are also cognizant, and a witness to unprecedented barbarity and criminality towards children, and as such we are also open and encourage including a reference to the protection of children in the preamble;
17. We are also open and encourage a mention to Indigenous peoples, not just for the sake of the past crimes, but the ongoing ones;
18. Draft articles on prevention and punishment of crimes against humanity are a harmonious part of the global regime of international protection of human rights. They also reaffirm the universality of human rights. Indeed, crimes against humanity are essentially the systematic and widespread violations of these human rights. As such we suggest adding the standard reference to the Universal Declaration of Human Rights , which embodies the widest possible

consensus on human rights. For example: “Considering the Universal Declaration of Human Rights, which states that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour or national origin”.

As for article 1, we remain convinced of its legal value and the importance of its inclusion. It confirms that any future treaty on crimes against humanity must be complementary to existing obligations for States: prevention and punishment. We welcome the commentary on article 1 stating that “States would remain bound at all times by whatever obligations exist under other rules of international law, including customary international law” and that States’ adoption of national laws, to prevent and punish crimes against humanity, must be consistent with their obligations under international law.

Finally, despite being the victims of impunity for decades, the Palestinian people still believe in the international law, continue to fight for its authority, and exemplify its indispensability. We reiterate the necessity and importance of ending impunity for international crimes, including crimes against humanity, and we recognize the centrality of effective States cooperation, in accordance with international law, to combat impunity and pursue justice for all, without selectivity and double-standards.

Thank you