



78th Session of the General Assembly

Sixth Committee

Item 80: Crimes against humanity

Thematic Cluster 01 – Introductory Measures

Preamble and Draft Article 01

Statement by the Permanent Representative of Sri Lanka, H.E. Ambassador

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Mr. Chair,

An academic contributing to the international criminal law review seeks to present the idea that what we have come to call 'crimes against humanity' are in fact also uniquely and shockingly human. They are not situated outside humanity — they are the product of certain distinctive features of the human species. It is hence suggested that crimes against humanity could accurately be called crimes of humanity if 'humanity' is understood as a descriptive term capturing what distinguishes human beings from other beings.

However, recognizing the uniquely human origins of crimes against humanity is deeply upsetting as it frequently constitute a painful reminder of our inability, or even unwillingness, to prevent mass atrocity. We therefore, need to grapple with this troubling feeling of cognitive dissonance in the international legal community as part of the reason why the notion of crimes against humanity, which automatically masks the potential complicity of 'humanity' in mass atrocity, has been endorsed with much more enthusiasm.

Mr. Chairman,

Draft article one establishes the scope of the present draft articles by indicating that they apply both to the prevention and to the punishment of crimes against humanity. Prevention of crimes against humanity is focused on precluding the commission of such offences, whilst punishment of crimes against humanity is focused on criminal proceedings against persons after such crimes have occurred or even when they are in the process of being committed.

The present draft articles focus solely on the crimes of humanity, which are grave crimes wherever they occur. The present draft articles does not again address other grave international crimes, such as genocide, war crimes or the crime of aggression.

The present draft articles solely on crimes which are gravely international crimes wherever they occur. We do not appreciate however, while the ILC may not directly address these crimes, it does contribute to the development of international law by addressing topics such as state responsibility, treaty law and the protection of human rights during armed conflict.

We might recall that two separate efforts are currently underway to strengthen international cooperation in ensuring national prosecution. Firstly, a multi-year project of the International Law Commission (ILC) to draft articles for a future convention on the prevention and punishment of crimes against humanity, comparable to the existing Genocide Convention and Convention Against Torture. And secondly, an episodic state-led initiative to draft a mutual legal assistance treaty for the most serious international crimes.

Mr. Chairman,

A key issue in establishing state obligations to prosecute international crimes involves the choice of a definition that is appropriate to the obligations that are being imposed. The notion of “crimes against humanity” has a long history, but its definition has evolved over the years. The definition negotiated for the Rome Statute, which created the ICC— an international tribunal with a limited capacity to prosecute and adjudicate— may not unfortunately, provide the right definition for an obligatory system of consistent national prosecution. We believe that the ILC should give this aspect, serious consideration.

My delegation would also however, urge this Assembly that we need to give some thought to the process of attributing conduct which labels someone *‘hostis generis humais’* meaning *‘enemies of humanity’*. Why do I say that? I say that for the reason that this classification rises from the substantive character of the evils the criminal inflicts. The expression “hostis” is substantive, and not jurisdictional, says the academics. Therefore, it gives rise to ambiguity; the first ambiguity that we identify is whether the expression is substantive or jurisdictional as a concept. The academics seem to suggest that the word enemy is not a legal expression. We know that the word crime is a legal expression.

The third possibility, it is said that the word “hostes” is to be treated as neither adversary nor criminal and therefore, is not entitled to the rights of belligerents or criminal defendants. Now, that is not a very salutary situation. What then are they entitled to; punishment, or extermination? We are warned that any existing political group that claims to speak in the name of humanity would be acting in a manner repugnant to all tenets of law by denying its enemies the quality of being human; we must take the warning to heart, an academia is of the view that in the final analysis we are getting closer towards what Cicero meant; a universal or cosmopolitan sociey.

Mr. Chairman,

The enemy of all humanity is a person who assaults our very humanity with (nature as political beings through) tyrannical and cruel conduct; that it is worth calling him to account. Universal jurisdiction, therefore, does not rest on the hostes's location outside of the territorial jurisdiction of states. Establishing such a jurisdiction is what we are engaged in today; is one in which we simultaneously establish a practice of accountability and create norms against radical evil to which anyone, including heads of state, may be held to account. It is a call to the enemy of all humanity to account before humane law, using fair procedures, to re-claim him for humanity, and to affirm humanity, in the teeth of extreme evil.

Mr. Chairman,

The efforts we have far begun today to focus our resources on polishing humanity's self-image from the stain of atrocity as quickly as possible, I say, is an urgent one.

I thank you, Mr. Chairman.