



**Statement by H.E. Archbishop Gabriele Caccia  
Apostolic Nuncio and Permanent Observer of the Holy See  
Sixth Committee, Resumed Session on Crimes Against Humanity  
during the 78<sup>th</sup> Session of the United Nations General Assembly  
Agenda item 80: Crimes against humanity  
Cluster 2: Definition and general obligations (Articles 2, 3 and 4)**

New York, 2 April 2024

Mr. Chair,

The Holy See maintains that the definition of the crimes to be included in the scope of the new convention must be firmly rooted in existing customary international law. Adding to or modifying the already agreed definitions, before State practice and *opinio iuris* have fully developed, would not only not be conducive to consensus, but would also undermine the effectiveness of the new instrument.

In this regard, Article 7 of the Statute of the International Criminal Court (ICC) is a suitable point of reference, as the Rome Conference made a concerted effort to codify customary international law. Therefore, in our endeavours to draft a new convention, we should closely follow the definitions of the crimes contained in the ICC Statute.

Nevertheless, my Delegation notes with concern that the only substantive departure of the current draft from Article 7 of the ICC Statute is the omission of the definition of gender, which is an essential and integral part of the definitions agreed in Rome and which received wide support at the ICC Conference. The Holy See has reviewed the explanation provided in paragraphs 41 and 42 of the ILC's commentary and notes that the sources referred to therein do not constitute State practice or evidence of *opinio iuris*. Paragraphs 80 to 86 of the Fourth Report of the Special Rapporteur on crimes against humanity suffer from the same deficiencies. None of the sources cited in support of the alleged development of the concept of gender are contained in binding global instruments, nor do they reflect views from all regions. Furthermore, many legal systems around the world, as well as

the UN Convention against Transnational Crime and the UN Convention against Corruption, are based on the concept of biological sex. It is therefore incorrect to conclude that either State practice or *opinio iuris* supports a definition of gender different from that found in the Rome Statute.

It should also be acknowledged that without a clear and shared understanding of the term gender as it relates to biological sex, States risk undermining efforts to prevent and prosecute crimes against humanity that disproportionately affect women compared to men, including rape, sexual slavery and forced prostitution.

Mr. Chair,

Similarly, the Holy See cannot agree to any amendment to the definition of forced pregnancy. Its definition contained in Article 7 of the ICC Statute provides an appropriate basis for the prevention and punishment of a rather discrete phenomenon that is closely linked to the crime of genocide, while respecting the right of States to establish national laws that uphold the right to life from the moment of conception.

Thank you, Mr. Chair.