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The road towards a new Convention on Crimes Against Humanity
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Thank you very much, Professor Giorgetti, and dear friends and colleagues. I am actually not in Mexico. I am addressing you from New York. I came here for the High-Level Week. Greetings from the hecticness of the sleep deprivation that this week implies here in New York. And thank you also for the patience and for the possibility to join you, even if virtually. I wish I were there, but I know that my friend and colleague, Mr Miguel Ángel Reyes, is there with you. I am very pleased that that is the case. I also know that this is the last part of this event, which I think it is a very important one. I will be as brief and to the point as I can. I am going to be moving from the interesting substantive part of the discussion on crimes against humanity to the practical aspects that take place here in New York, discussing the New York dynamics necessary to make this happen and the ongoing negotiations. Professor Leila Sadat already spoke about not only the roadmap, but she also presented a very useful graphic further onto that point. That is a very useful guide for the actions required from now until 2029.

However, I am going to zoom in more, essentially, on the graphic, starting with something that Professor Sadat has been emphasising for many years in New York, in the Sixth Committee of the United Nations General Assembly ('UNGA'). There was a series of technical rollovers on this topic until the impasse was finally overcome. Thus, let me start there. I would also explain what that means from the perspective of delegates of States gathered in New York; what the technical rollovers were; and why this process was not easy. Believe me, with lots of candour and honesty, this has been far from an easy process. It has taken many hours of not only discussions, but also confrontations, to bring us to this point. It has definitely not been smooth. It is important to know and understand that, because it also sets the tone for what is about to come. We should be prepared for that, knowing that, again, it is not going to be a smooth ride. The main point and the key objective at the beginning, when Mexico decided to dissociate from consensus and to embark on a new strategy to break us free from this practice or "tradition of consensus" in the Sixth Committee of the UNGA, was basically to get this plane to take off the ground and to take us to the destination and with the orientation of negotiating a convention at some point.

Once again, it was widely known that it would not be a smooth flight. It was going to have a good amount of turbulence. However, at least, the plane was able to land and establish a process for a substantive negotiation at some point. There were lots of concessions made on

the way, one of them being the time frame. For that reason, substantive negotiations of the Conference of Plenipotentiaries are scheduled to only begin in 2028 and 2029. Further onto that point, Sesselja Sigurðardóttir, my very dear friend, posed a very pertinent question of how strong the process should be given the current state of the world on many of these issues. The relevance of what I am about to discuss regarding the process is that the question does not need to be answered now, as there is plenty of time. Many of these substantive discussions are not expected to happen until 2028 or 2029.

There is sufficient time to see how things change in between. First, I want to make some brief observations on the practice of the Sixth Committee of the UNGA, which is not outlined in any rules of procedure. The resolutions that are adopted in the Sixth Committee of the UNGA are technically recommendations and are eventually adopted as resolutions by the Plenary of the UNGA. However, in essence, resolutions produced by the Sixth Committee of the UNGA are drafts that belong to the bureau of the Sixth Committee of the UNGA. The Bureau appoints facilitators from across all member states and asks those individuals to lead the negotiations and facilitate the discussions on those draft resolutions, which are adopted at the end of the session without a vote. I am also particular about the terms because, again, the word 'consensus' is nowhere to be found in the rules of procedure of the UNGA. Technically, each draft resolution is adopted without a vote. This has been the case for years. When new drafts originate from the ILC, they must first be agreed upon, and then facilitators are appointed. The facilitators receive and inherit one of those draft resolutions, and then they proceed to conduct negotiations in the Sixth Committee of the UNGA.

This had happened throughout these years, and as Professor Sadat described there was a technical rollover, which essentially means that no decision had been reached on moving forward. The drafts were very short and underdeveloped, primarily reiterating that the matter will be discussed in the forthcoming session. Simply the symbols and dates applied onto the draft are updated. The text that has been pushed forward remained, in essence, the same. At some point, as mentioned before, Mexico decided to dissociate from that consensus. Mexico explained its position in the Sixth Committee, and this was when the process began to deviate from its established course and breaking the inertia of the Sixth Committee of the UNGA. This dissociation, again, was not an easy path to embark upon. The delegation of Mexico knew that initiating the dissociation would lead to criticism and attacks. Some delegations communicated their grievances about the process to the President of the Sixth Committee.

Essentially, the key distinction from all other processes in the Sixth Committee of the UNGA and those leading to previous resolutions was the acknowledgement that, while drafts are

typically presented and facilitated by Bureau members, the UNGA's rules of procedure allow any member state to submit proposals on any topic. If a group of states, acting in their national capacity, submits its own draft on the agenda item 'Crimes Against Humanity', before any draft is prepared by an appointed member of the Bureau, this group gains an early advantage in the discussion. This approach frees them from the usual restraint that as bureau facilitators, they must maintain consensus. Instead, they can propose a draft that, if opposed, may be put on a vote by those who disagree. By moving away from the minimum common denominator as the standard, a higher threshold for resolutions is established, and the possibility of a minority calling for a vote adds pressure. This was the true game changer.

That has been the element that allowed us to move forward and to have the two resolutions in this process, Resolutions 77/249 and 79/122. In order to demonstrate that Mexico managed to achieve support of the majority of States, and that it managed to present a text supported by that majority, Mexico also opened those draft resolutions for co-sponsorship. That is an infrequent practice in relation to resolutions of the Sixth Committee of the UNGA, as there exists an implicit assumption that the resolutions belong to the Sixth Committee of the UNGA as a whole. In the first resolutions that launched the deliberation process, 86 States decided to co-sponsor it. By the second resolution that number had grown to 99. This was significant because it clearly demonstrated to everyone present that, with 99 delegations ready to endorse the text, a strong majority in the room was ready to advance the matter. That shifted the balance of forces within the Sixth Committee of the UNGA. For another discussion, this also raises the question of what changes and dynamics need to be addressed in the Sixth Committee of the UNGA, particularly in relation to the ILC and its products. Many draft articles remain stagnant, still frozen and caught in technical rollovers, without progress for decades.

It has been proven through crimes against humanity that when there is will, there is a way, and that there is a chance to escape those deadlock situations. However, once again, I think this should be subject to a different conversation. Therefore, to put this into context, reaching this point was not easy, and, importantly, moving forward will also present significant challenges. Before moving on to the substantive questions that will have to be addressed later, several procedural issues will have to be resolved beforehand. They are as relevant and as important as the definition or the substance of the Draft Articles. If these issues are not resolved correctly, the process risks being derailed. That must be prevented. For this reason, it is important to discuss the strategy for moving forward and what is forthcoming.

In one month, when the session of the Sixth Committee of the UNGA begins, there will be a debate on the agenda item of crimes against humanity. This should provide a good opportunity to address, in the Sixth Committee of the UNGA, the question of what is expected for the process moving forward. No resolution will be adopted this year, as last year's resolution already outlines the process through to 2029. However, there will be a decision adopted, that is hoped and expected to not pose major controversies. To reiterate, this should not be a resolution, but a decision taken by the UNGA to schedule specific dates for the four-day session of the Preparatory Committee in 2027. In addition, as a technical matter, the name of the agenda item in the Sixth Committee of the UNGA will change. Thus far, it has been titled 'crimes against humanity' in connection with the work of the International Law Commission ('ILC'). Moving forward, it will be referred to as the conference for negotiation, marking an important change as the focus moves into the formal setting of a conference for negotiations. The second inevitable development is that, as the process moves into the conference setting, a bureau will need to be established, and an invitation has already been extended to all regional groups to nominate States for that bureau.

Then, eventually, a chairperson will have to be selected from that bureau. This is also an important process, as that person will spearhead and drive the process in the years to come. Thus, this is not a minor decision to take. The Group of Latin America and the Caribbean, also known as GRULAC, has already endorsed Mexico's participation as a bureau member in the process. Mexico was the only candidate from the region which gave it its full support. In terms of other regions, this process is still underway. Some regions have more than one state expressing interest, so there will need to be a discussion about whether to select just one representative or if the Sixth Committee of the UNGA and UNGA will decide, if necessary, to expand the membership of the bureau to include additional members from each region. This issue is expected to arise shortly. The first session of the Preparatory Committee is scheduled

for January 2026. The question now is what needs to be accomplished here, but the resolution already outlines several requirements for that meeting.

First, a decision will need to be made regarding the participation of the civil society organizations that do not have consultative status at the UN Economic and Social Council, also known as ECOSOC. Another matter for discussion is whether to combine efforts into a working group format to enable states to prepare proposals for amendments to the Draft Articles. This point warrants a moment of reflection. One of the challenging issues during the negotiation of the second resolution was determining what would serve as the zero draft for the conference negotiations. Mexico, along with the majority of states, held the position that the zero draft should be the version presented and prepared by the ILC. That was the whole point. Since this process stems from the ILC, and the members of the ILC prepared the Draft Articles, those should form the basis for moving forward. However, as might be expected, several delegations opposed this idea. There was a significant pushback, with some arguing that if a conference was to be convened, it should start with a blank slate.

Therefore, States should start the process of drafting the convention from scratch and consider the Draft Articles as a point of reference. The language of the draft convention should come from states. There was a lot of pushbacks. As a compromise, since it was non-negotiable for us, especially as pen holders of the resolution, that the Draft Articles adopted by the ILC would serve as the basis for the conference, part of the compromise was to forward those Draft Articles along with their commentaries to the consideration of the Conference of Plenipotentiaries. However, if member states wish to submit a compilation of proposals and amendments, they are welcome to do so. These suggestions, whether new proposals or amendments to the Draft Articles of the ILC, will be compiled and submitted as a separate document for the Conference of Plenipotentiaries for its consideration. At the conclusion of this session, the chair of the preparatory committee will deliver an oral report to the conference summarising what has been received. It is important to emphasise that the process I just described, regarding the draft moving forward to the conference, does not mean that the proposed amendments will not be reflected in the draft.

The idea is to present these as separate inputs for the conference to consider. For colleagues here and also those in their capitals, please take note that the deadline for submitting textual amendments to be included in this compilation is 30th April 2026. There is ample time from now until April for states to review and decide whether to propose any textual amendments. Following this, a second session of the preparatory committee is scheduled for 2027, with exact dates to be decided at the upcoming Sixth Committee of the UNGA's meeting next

month or by the end of November. During that session, the Preparatory Committee will adopt the rules of procedure of the conference. That will be an important step that will govern many aspects, including participation. Most importantly, and I want to emphasise this, the rules will also define the conference's decision-making process. For now, the UNGA's rules of procedure apply until the conference adopts its own. This also provides a safeguard, as the UNGA's rules allow decisions to be made by voting if consensus cannot be reached.

And as I mentioned earlier, this has been a crucial element in enabling progress. Although both resolutions I referred to were, somewhat ironically, adopted without a vote, anyone observing the process from a distance, without insight into the internal discussions, might assume there was always consensus behind these resolutions to move forward. The reality is that this decision to adopt without a vote was driven by political pressure, given the risk that a minority might call for a vote. Without recognising this, there is a danger of mistakenly believing that the process has always been made by consensus and can continue like that in the future. That would be a strategic error. It will be necessary to adopt rules of procedure that ideally include a decision-making mechanism allowing for voting when required to move forward. Once such rules are in place, participation is decided, and member states have submitted their proposals or draft amendments, which are then compiled and forwarded, the conference can finally convene.

Substantive negotiations will begin in 2028, followed by a second session in 2029, each scheduled to last three weeks. Additional sessions may be convened as needed, with such decisions made by the conference itself based on progress. The hope and expectation are that, unlike other processes I have been involved in, such as the Arms Trade Treaty or the Agreement on Marine Biological Diversity of Areas Beyond National Jurisdiction, where there was initially no text and more time was needed to develop one, this process will run more smoothly and may not require extended conference sessions. Thus, the process will focus more on engaging in discussions and reaching concessions and agreements by the end. Hopefully, with two sessions of three weeks each in 2028 and 2029, this can be accomplished. That is the path ahead. It will require extensive dialogue, ongoing efforts to engage and persuade delegations, and the clarification of expectations not only about the relevance of the process but also about the substantive issues, highlighting both what needs to be protected and what should be advanced, as was emphasised today.

In addition, I think it is the right moment for a session during which member states, along with other relevant stakeholders, come together to engage in conversations, including strategic discussions on how to move forward, plan, and prepare for these procedural decisions that

will be made. In that context, we will also include a discussion on crimes against humanity and the process for addressing such crimes during the meeting of legal advisors here in New York next month. Hopefully, that will be another opportunity for legal advisors coming from the capitals to gain a better understanding and clearer idea of where things stand and where the road leads ahead. I think there are still important issues to discuss regarding the relationship, not only in terms of substance and text between this draft and the Rome Statute, but also strategically, to consider how the Assembly of States Parties to the Rome Statute wishes to engage in this process, especially given that the Rome Statute remains somewhat controversial. The challenge will be to strike a balance between upholding the idea that these processes and instruments might mutually reinforce each other, while ensuring that this independent process, which is just getting started, is not compromised.

These are the kind of questions that will need to be addressed and discussed in the coming weeks and months. Thank you again for your time. I want to thank Switzerland again for creating this space. I truly hope we will have more opportunities like this in the future. Thank you.