

ISRAEL

SIXTH COMMITTEE

CHECK AGAINST DELIVERY

Statement by
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Cluster II
Crimes against humanity
Jus cogens

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Mr. Chairman,

The Government of Israel would like to express its sincere appreciation to the International Law Commission and the Special Rapporteur, Mr. Sean Murphy, for their valuable work on the topic of “**Crimes against Humanity**”.

Since its inception, Israel is deeply committed to international justice and to the prevention and punishment of international crimes, including crimes against humanity. With Israel being one of the first nations to join the Convention on the Prevention and Punishment of the Crime of Genocide it was also expeditious in adopting domestic legislation to that effect. Furthermore, following a recommendation made by a Public Commission of Inquiry established by the Israeli government in 2013, Israel is considering the adoption of domestic legislation that would explicitly address the prohibition of crimes against humanity, in accordance with customary international law. The proposed bill is currently being drafted, based on the outcome of a large-scale study conducted by the relevant professional Israeli agencies.

Israel believes that effective codification of the customary crimes against humanity would benefit the entire international community and therefore welcomes the process in this regard. However, such codification efforts also raise certain questions, which will need to be considered as the codification efforts advance. For example, Israel urges States to be cautious when considering the establishment of mechanisms for the enforcement of or adherence to such proposed treaty; these mechanisms could potentially be abused by states and other actors in order to advance political goals, rather than be utilized as a means to protect the rights of victims. Israel is of the position that any such codification, including the list of crimes and their definition, should reflect customary international law on the subject and the widest possible consensus amongst States. In addition, decisions with regard to the precise form that such codification should take, should be deferred until additional substantial progress is made on the content of this project. The Government of Israel would be honored to contribute to the drafting process of the new proposed treaty, based on the experience gained during Israel’s efforts to adopt domestic legislation addressing the prohibition of crimes against humanity under customary international law.

Finally, Israel wishes to emphasize that the increased involvement of non-State actors in the commission of crimes against humanity should receive special attention. Any codification of “crimes against humanity” should cover crimes against humanity committed by States and

non-State actors alike, and should address the specific issues related to the involvement of non-State actors in the commitment of crimes against humanity.

Mr. Chairman,

The State of Israel acknowledges the importance of *jus cogens* as a widely-accepted doctrine of international law. During the 1962 Eichmann Trial, Israel's High Court of Justice was amongst the first judicial bodies to recognize the existence and relevance of *jus cogens* norms. However, whilst we maintain our recognition of these norms as a representation of the general will of the international community, Israel reiterates its concerns regarding the codification of *jus cogens* norms and the manner of their application.

Last year we witnessed significant debate on this point which reinforced our view that discussion regarding the actual drafting of "lists" of *jus cogens* norms, whether illustrative or comprehensive, is premature.

A comprehensive list of peremptory norms is likely to give rise to more disagreements than agreements between States. At the same time, we are concerned that the alternative proposal of developing an "illustrative list" would also be ill-advised, as it risks diluting the strength and binding nature of peremptory norms and may generate no less disagreement among states as to what is included in such a list, as well as the content of the norms so listed.

Given the disagreements with respect to the identification of *jus cogens* norms, it may be worth focusing the efforts of the ILC at this stage towards an examination of the legal consequences of a norm having *jus cogens* status and to defer the process of identifying such norms to a later stage of the ILC's work.

Thank you Mr. Chairman