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**STATEMENT
by the representative of the Russian Federation
in the Sixth Committee of the 71st UN GA session on agenda item
“Report of the International Law Commission on the work of its 68th session”
(Topics: “Crimes against humanity”, “Jus cogens”)**

Mr. Chairman,

We should like to thank the members of the Commission and its Special Rapporteur Prof. Sean Murphy for their work on the draft convention to combat crimes against humanity.

We should like to present our comments on the following provisions of the draft.

We note that draft article 5 has been mainly drafted on the basis of relevant provisions of the Rome Statute of the International Criminal Court.

There is a separate issue, however, in paragraph 7 of article 5 on establishing the liability of legal persons. We believe that the criminal liability should be established for the offenders who committed crimes against humanity for their

premeditated action or inaction and not because of their participation in the activity of that or another legal persons.

We admit, however, that it is possible to adopt the norms on the basis of which the legal persons would be brought to justice with the reservation that each State takes such measures with due account of the provisions of its national law.

With regard to the rule on the establishment of national jurisdiction in accordance with article 6 we agree that the prosecution of offenders who committed crimes against humanity should be carried out in the country where the crime was committed and in the country of nationality of the alleged offender. As to the linkage to the place of residence of the victims and the location of the offender, it is necessary, perhaps, to recognize in this respect the priority of jurisdiction of the first two States since they should be more interested than others in prosecuting the offenders who committed such a crime.

The obligation of States to cooperate has been moved from the provision on joint investigation and cooperation of States contained in paragraphs 2 and 3 of draft article 7 to draft article 4 which deals with the obligation of prevention. We do not share this approach. In this version the obligation to cooperate is worded in too general terms and it becomes difficult to establish the precise scope of obligations of States in this context.

We have a question regarding article 7 whether it is necessary to say that the State should ensure an “impartial” investigation. The use of this term might suggest that some kind of special measures of impartiality should apply to this type of crime. However, when studying the commentaries to this article one can come to a conclusion that it refers to general standards of investigation applicable in the framework of the criminal process.

For the same reason we are not convinced that we need to have article 10. The description of proceedings of “fair treatment of the alleged offender” do not represent, in our view, any particular rules for the purposes of treatment of an offender who

committed crimes against humanity. In our view, the person who committed a crime against humanity should not enjoy any special rights during investigation and trial. Therefore, the abovementioned provisions can create not quite correct impression in this regard.

As to the formula used in article 9 on the obligation to judge or extradite (*aut dedere aut judicare*) we would propose to exclude the reference to a “competent international criminal tribunal”. It seems that the purpose of this convention is to set up a “horizontal cooperation” between States. The interaction with international tribunals is regulated by special agreements and in certain cases by the decisions of the UN Security Council. We believe that such cooperation is not subject to regulation by this convention.

We should like also to note that, in our view, the draft should not and does not prejudice the norms pertaining to the immunities of State officials. Perhaps, this understanding should be directly recorded in the draft articles.

We studied with great interest the first report of Mr. Dire Tladi as Special Rapporteur for the topic of “*Jus cogens*” and the debates in the Commission. We believe that this topic is one of the key elements of the current agenda of the Commission.

The methodological approach chosen by Mr. Tladi and the Commission is well measured and pragmatic. We support the intent not to abandon the traditional methods of work of the Commission and to comprehensively study this subject with the use of various materials and sources. In our view the scope of this topic is understood as not only the analysis of the *jus cogens* norms in the context of the law of treaties but the international law on the whole. We believe that the work should be based on the research of the practice of States and more extensive judicial practice and doctrine.

This had been said, we should note however that the existing norms of the treaty law, primarily the 1969 Vienna Convention on the Law of Treaties and the

practice of States in its application should become the priority issue in the work of the Commission on this topic.

We are looking forward with interest to the study by the Commission of the *jus cogens* norms from the viewpoint of the consequences referred to in the Vienna Convention and more precisely the fact that any treaties that are not consistent with the *jus cogens* norm are void.

On the issue of developing an illustrative list of peremptory norms we would like to note the following.

The indicative list in any case would lead us to indefinite discussions why some norms have been included and some other have not. In our view the attention should be drawn in the first place to the identification of criteria that determine the *jus cogens* norms on the basis of the provisions of the Vienna Convention. The developing of the list (and we fully support the Special Rapporteur in this regard) can dilute this topic “by shifting the accent of discussion to the legal status of specific norms instead of focusing on the identification of general requirements for the definition of such norms and consequences for *jus cogens*”. As it seems, there is no consensus whether it is appropriate to develop such a list either in the Commission or in the Sixth Committee. Therefore, it would be probably correct to come back to this issue at a later stage in the work of the Commission.

We do not tend to support the assumption that there are regional peremptory rules of international law.

We agree that the result of the work of the Commission should be the draft conclusions.

We will be prepared to present more specific commentaries on this topic as we go during the work of the Commission.

Thank you, Mr. Chairman.