



Statement by H.E. Archbishop Bernardito Auza
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Seventy-third Session of the United Nations General Assembly, Sixth Committee
Agenda item 82: **Report of the International Law Commission on the work of
its seventieth session (Cluster II)**
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Mr. Chair,

The *Report of the International Law Commission* notes that, according to some members, the fact that half or even the majority of countries of the world has not yet enacted criminal provisions on the offenses prohibited by *ius cogens*, such as crimes against humanity, apartheid and the crime of aggression, may reveal that there is no customary duty to exercise national criminal jurisdiction over those offences when committed on their territory or by their nationals.¹ My Delegation cannot share such a conclusion: the absence of domestic legislation should not be construed as a lack of *opinio iuris* in support of a customary duty to prosecute the most serious crimes that offend the conscience of humankind.

At the same time, the lack of domestic legislation, regarding especially the prosecution of crimes against humanity, is a matter of outmost concern. Far too often minorities are targeted for subjugation, enslavement, forced exile, human trafficking, ethnic cleansing and other crimes against humanity. Neither war nor civil strife are an excuse for such actions. The Holy See calls in the strongest terms for the prevention of such acts, the prosecution of those who commit them, and the protection of their victims, and urges all nations to uphold their duty to humanity to protect and support people in vulnerable situations.

Mr. Chair,

The 2005 World Summit Outcome document, in defining the Responsibility to Protect, establishes that “each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.” The international community is therefore called upon to assist States with fragile institutions perform this responsibility and support them in establishing an early warning capability. Moreover, the international community, through the United Nations, has also the responsibility to protect populations from such crimes whenever a specific State fails in

¹ Cf. A/73/10, 143:

143. Other members were of the view that the third report did not sufficiently demonstrate that State practice supported the existence under international law of a duty for every State to exercise national criminal jurisdiction over all offences prohibited by *jus cogens* when committed on its territory or by its nationals. On the contrary, the fact that half or even the majority of States had no statute on crimes prohibited by *jus cogens*, such as crimes against humanity, the crime of apartheid and the crime of aggression, evinced the lack of general belief that such a duty existed under international law.

its responsibility to do so.² A timely intervention from international actors at the onset can and do prevent atrocities against civilians. However, when diplomatic intervention is unable to prevent the commission of crimes, perpetrators must be held accountable. Under the doctrine of *aut dedere aut iudicare*, States have an obligation to prosecute crimes against humanity within their borders and to cooperate with each other and with the relevant intergovernmental organizations in this task, which may require, when appropriate, the extradition of wrongdoers.³ In addition, every State must welcome those individuals who are fleeing from such crimes. Certainly, under the principle of *non-refoulement*, people must not be returned to places where they would be subjected to crimes against humanity. Refugees and migrants fleeing persecution should be welcomed, protected, helped and integrated. National borders should not dictate the boundaries of humanity.

Mr. Chair,

The Holy See encourages the continued efforts by this Committee to develop a new global convention on preventing and punishing crimes against humanity. Such treaty must focus squarely on codifying existing customary law and promote international judicial cooperation. Adding new offenses, before State practice and *opinio iuris* have fully developed, would not be conducive to a broad consensus. Indeed, such a convention would provide a mechanism to help fulfill the international community's obligation to protect populations from crimes against humanity through collective and diplomatic actions.

Thank you, Mr. Chair.

² 138 and 139.

³ Cf. A/72/10, article 13.