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Report of the International Law Commission
Crimes against humanity
Peremptory norms of general international law (jus cogens)
Other decisions

Statement by

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Mr. Chairman,

Since it is the first time I am taking the floor, let me thank the International Law Commission and its Chair Professor Šturma for an excellent report. In this context, the Czech Republic welcomes the final draft articles on the topic “**Crimes against humanity**“ and would like to express its appreciation to the Special Rapporteur, Professor Sean D. Murphy, for the outstanding work, which led to the adoption of the draft articles on second reading this year. The Czech Republic wishes to stress the importance of the draft articles for the development of international law framework governing the prosecution of crimes under international law. The need to fill the legal gap, namely the absence of a comprehensive convention on prevention and punishment of crimes against humanity and on judicial cooperation among States in prosecuting these crimes, cannot be overemphasized. We appreciate that the draft articles are elaborated in a complex manner that takes into account both the substantive and procedural aspects of investigation and prosecution of these crimes. The draft articles represent a model of a modern criminal law treaty, which includes all the necessary ingredients. In particular, we note with satisfaction that the draft articles contain provisions on the protection of victims and witnesses, fair treatment of the alleged offenders and promotion of broad cooperation among States.

We welcome most of the changes that were made in the draft articles and commentaries to them on the second reading, as they generally bring more clarity to the text and provide better guidance for the relevant actors. We especially appreciate the new wording of draft article 11 on fair treatment of the alleged offender, which includes also his or her rights under international humanitarian law, and we note with satisfaction that article 14 envisages also cooperation with international mechanisms that are established by the United Nations or by other international organizations.

Further, we would like to comment on the new paragraph 12 of draft article 13 which imposes obligation on a requested State to give due consideration to the request of the State in the territory under whose jurisdiction the alleged offence has occurred. We believe that the requested State shall give due consideration to all the requests of extradition of other States, not only to those of a territorial State. Although a territorial State might be best placed to conduct criminal proceedings, in our view international law does not so far recognize any hierarchy of jurisdictions. Therefore, we are not convinced by the commentary thereto. On the other hand, we believe that a proposal to include a provision on transit of persons in custody or extradited persons merits further thought as it is a useful tool from which practitioners would greatly benefit.

All in all, the Czech Republic would like to express its support for the elaboration of the convention on prevention and punishment of crimes against humanity on the basis of the draft articles, preferably by an international conference of plenipotentiaries. Such convention would complement other conventions on prosecution of the crimes under international law and adequately fill in long-standing *lacuna iuris* in this area.

Mr. Chairman,

The Czech delegation would like to thank the Special Rapporteur, Professor Dire Tladi, for his fourth report on the topic "**Peremptory norms of general international law**", dealing with issues of the regional *ius cogens* and the illustrative list of *ius cogens*. We commend the Commission and the Special Rapporteur for the adoption, on first reading, of the whole set of draft conclusions with commentaries. Ahead of written comments that we will submit in due course we would like to make only few preliminary remarks at this stage.

The Czech Republic notes that despite the request of a number of States, the Commission decided to annex to the draft conclusions also an indicative list of *ius cogens*, thus igniting unnecessarily the debate about its content. In our opinion, the choice of some of peremptory norms, such as the right to self-determination, is not explained adequately in the commentary. Further, the choice of some terms, such as "basic rules of international humanitarian law" and the character of some norms, such as "the prohibition of the use of force", previously characterized by the Commission as a peremptory norm, would deserve further explanation. In view of our nation's historical experience with the shameful Munich agreement, imposed on Czechoslovakia under the threat of force more than 80 years ago, it is hard for us to understand, why the list - even if only indicative - does not mention the prohibition of the threat and use of force. Yet, it was precisely with that situation in mind why the International Law Commission included - in what later became the 1969 Vienna Convention on the Law of Treaties - a provision on treaties which are *ab initio* null and void. The prohibition of the threat and use of force is at the very basis of article 52 of the Vienna Convention on the Law of Treaties and the elements of article 52 are the primary source from which the Commission is drawing its conclusions in the draft before us.

Thus, we would prefer if the examples of peremptory norms of international law were not included in the Annex, but only mentioned in the commentaries with references to the sources from state practice, jurisprudence and literature supporting their characterization as peremptory norms.

Secondly, we are not quite sure what the character of the outcome – conclusions – should be, namely to what extent the conclusions represent an attempt at codification of international law or progressive development of international law. These questions seem to be relevant when considering, inter alia, the draft conclusion 16 (obligations created by resolutions, decisions or other acts of international organization conflicting with ius cogens) and conclusion 21 (procedural requirements).

Mr. Chairman,

I would now like to briefly comment on the topics which the Commission decided to include in its long-term programme of work.

The Czech Republic notes with interest the inclusion of the topics "**Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law**" and "**Prevention and repression of piracy and armed robbery at sea**" in the long-term programme of work of the Commission.

We would like to underline that moving any of the topics from already existing long-term programme list on the active programme of the Commission should be done only after careful consideration and proper explanation why the Commission gives a preference to a particular topic over other topics on the long-term programme list. The Commission should also take duly into account the overall volume of the work and speed of progress on topics currently before it, with a view to their timely completion.

In this regard, we would like to note that, in the discussions in the Sixth Committee, the Czech Republic repeatedly proposed to refer the topic “**Universal criminal jurisdiction**” to the International Law Commission. Recently, the Commission itself included the topic in its long-term programme of work. Universal criminal jurisdiction is subject of intense discussions, is relevant for State practice and, in our view, meets the criteria for the selection of topics of the Commission. Therefore, we would like to support the inclusion of this topic on the active programme of the Commission.

Thank you, Mr. Chairman.