



Permanent Mission  
of the Federal Republic of Germany  
to the United Nations  
New York

Federal Republic of Germany

71<sup>st</sup> ILC Report (2019)

**Crimes against Humanity**  
**Special Rapporteur: Sean D. Murphy (USA)**

Madam Chairwoman/Mr Chairman,

Germany highly welcomes the work of the International Law Commission on the topic of crimes against humanity. We thank Special Rapporteur Sean Murphy for his outstanding contribution and the Commission for completing its work on the draft articles.

We appreciate that the Commission not only invited member States to comment on the articles in their various draft stages, but that it took on board their suggestions and concerns. In many respects, this has been the ILC at its best. We note that the ILC, consisting of persons of recognized competence in international law and representative of the diverse membership of the UN was unanimous in its support for this project.

We would like to underline the following: while the concept of crimes against humanity and indeed its definition are well accepted, there is - with the notable exception of the ICC Statute - no international convention on this core crime. We deem it important that all States - including those that have expressed certain reservations with regard to the ICC as an institution - would have at their disposal a legal instrument that aims at preventing and punishing, at the national level, crimes against humanity. The draft articles do not contain unusual or burdensome obligations for states. They rather remain within the familiar framework of international criminal cooperation. The provisions on extradition and mutual legal assistance, for example, are inspired by the UN Convention against Corruption to which 186 States are parties.

This year's General Assembly has the important task of putting the draft prepared by the International Law Commission on the right track. The International Law Commission formulated in August a recommendation to use the draft as the basis for a Convention. Deliberations on the substance of a resolution to this end are under way within the 6th



Committee. Germany fully supports the elaboration of a Convention on the basis of the draft articles, as recommended by the ILC, preferably by an international conference of plenipotentiaries.

Coming to the issue of jus cogens:

First of all, we would like to thank Special Rapporteur Dire Tladi for his rich and thought-provoking fourth report on “Peremptory norms of general international law (jus cogens)”. Germany welcomes the work of the ILC on this highly relevant topic and commends the Commission on having finalised the first reading. Whereas the issue of jus cogens already and generally is of paramount importance to the overall architecture of the system of international law, this seems even more the case with regard to the legal effects and consequences arising from peremptory norms of international law.

Now, allow me to turn to some more specific aspects of the draft conclusions proposed by the Special Rapporteur that were adopted by the Drafting Committee during its last session:

- In our last statements from 2017 and 2018 we have reiterated the point that the adoption of an enumerative list of specific jus cogens norms might lead to wrong conclusions and bears the risk of establishing a status quo that might impede the evolution of jus cogens in the future. In this regard, we take positive note of the without prejudice clause in draft conclusion 23 and the non-exhaustive list of norms previously referred to by the Commission as having peremptory character; however, we are not convinced of the necessity and usefulness of such a list.
- Second, with respect to draft conclusion 21, we believe that the consequences of invoking a conflict with a jus cogens norm are far-reaching and could not follow automatically from the mere claim that such a conflict exists. Therefore, we welcome the inclusion of a procedure for invocation as a step in the right direction with the function to absorb potential wide-ranging effects of conflict situations.



- Third, draft conclusion 7 states that “acceptance and recognition by a very large majority of States is required for the identification of a norm as a peremptory norm of general international law”. We welcome the inclusion of a further clarification in the commentary concerning the interpretation of this part of the conclusion and believe that the expression “very large majority” should be interpreted in line with the respective jurisprudence of the ICJ as “overwhelming majority”.
- With regard to draft conclusion 3, a clarification is needed that the description of the general nature of peremptory norms of general international law (jus cogens) in terms of reflecting and protecting fundamental values of the international community is in no way intended to have an impact on the definition of jus cogens.
- Last but not least we would like to reiterate the point concerning the **procedure** followed by the Commission in its work on this project. The draft conclusions were left pending in the Drafting Committee, without being considered by the plenary on an annual basis with accompanying commentaries, until the conclusion of the first reading of the entire set of draft conclusions. This deviation from the regular practice of the ILC makes it generally more complex and thus more difficult for States to follow and comment on the ILC’s work. We would thus agree with the doubts raised by some of the Commission’s members in this regard and advocate retaining the usual procedure for the future.

Germany will continue to follow this project closely, not least due to its paramount importance for the development of international law.



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concerning the long term programme of work of the International Law Commission we believe that in view of the already heavy workload of the ILC careful consideration should be given to the number of topics and the specific selection of topics to be treated by the ILC under this agenda point. Bearing in mind the fact that the topics will remain on the agenda for a substantial amount of time, the long term programme should not be overburdened. In this regard, we would find of particular interest the topics “The settlement of international disputes to which international organizations are parties”, “Evidence before international courts and tribunals” and “Universal criminal jurisdiction”.

Germany will continue to follow the long term programme of work, not least due to its importance for the development of international law.

Thank you.