



भारत
INDIA

Please check against delivery

Statement by
Dr. V.D. Sharma
Joint Secretary & Legal Adviser
Ministry of External Affairs

On
Agenda Item: 78
“Report of the International Law Commission
On the work of its Sixty-Eighth Session- Cluster-2”

At the
Sixth Committee of the 71st Session of the
United Nations General Assembly

New York

October 28, 2016

Mr. Chairman,

On the topic of Crimes against Humanity, we welcome the second report of the Special Rapporteur Professor Sean Murphy. It addresses various actions to be taken by States under their national laws with respect to crimes against humanity (CAH). These actions, as indicated in draft articles 5 through 10 provisionally adopted by the Commission, include, establishment of laws identifying offences relating to CAH; establishment of national jurisdiction to deal with such offences when they occur; general investigation and cooperation for identifying alleged offenders; exercise of national jurisdiction when an alleged offender is present in a State's territory; submission of the alleged offender to prosecution or extradition or surrender; and fair treatment of the alleged offender at all stages of the process.

Mr. Chairman,

We reiterate our position concerning this topic in general that, considering the existing international mechanisms, including the International Criminal Court, available to deal with the subject matter of this topic including the measures relating thereto which are suggested in the draft articles, there should be an in-depth study and a thorough discussion on the requirement of Commission's work on this topic. In our view, any work on this topic could lead to duplicating the efforts already undertaken in the existing regimes.

Mr. Chairman,

Turning to the topic of Protection of Atmosphere, we congratulate the Special Rapporteur, Professor Shinya Murase for his third report on the topic which. It has dealt with a number of elements, including obligations of States to prevent atmospheric pollution and mitigate atmospheric degradation, the requirement of due diligence, environmental impact assessment and sustainable utilization of the atmosphere. We appreciate the dialogue taken place between the Commission and scientists organized by the Special Rapporteur on the scientific aspects of the topic during the session.

We believe that the preambular paragraphs while highlighting the special needs of developing and lesser developed states, must also bring out the historic responsibility of developed countries who have played a major role in polluting the atmosphere, owing to the fact that the benefits of the industrial revolution, reached them first.

Mr. Chairman,

The principles of common concern, environment impact assessment, due diligence obligations, equity and sustainable use of atmosphere and other common

spaces, are regulated sectorally by a large number of environmental law treaties and general international law. One of the major challenges to protection of the atmosphere lies in combating climate change and the need for meting out climate justice. Such an effort calls for a concerted effort by the international community to save the planet earth for future generations.

The work of the Commission would be enriched if the practice of states, especially the capacity building needs of developing states is studied in depth, which would go a long way in strengthening the evolving guidelines on 'Protection of Atmosphere'.

Mr. Chairman,

Concerning the topic *Jus cogens*, we congratulate the Special Rapporteur, Mr. Dire Tladi for his first report on the topic. The Special Rapporteur proposed three draft conclusions: the scope of the entire set of draft conclusions; distinction between *jus cogens* and other rules of international law that may be modified, abrogated or derogated from by the agreement of State and the third sought to describe the general character of *jus cogens*.

Mr. Chairman,

Articles 53 and 64 of the Vienna Convention on the Law of Treaties provide the legal basis for acceptance and recognition of a norm by the international community of States.

The second para of the draft conclusion 3 proposed by the Special Rapporteur reads: Norms of *jus cogens* protect the fundamental values of the international community, are hierarchically superior to other norms of international law and are universally applicable. The peremptory norms presumably lie superior at the hierarchy of norms requires further elaboration with sufficient study as there were conflicting views within the Commission.

Mr. Chairman,

We support the Special Rapporteur's view that the draft conclusions would be the appropriate outcome of the topic. We welcome the future work indicated by the Special Rapporteur, in particular to study the rules for identifying norms of *jus cogens*, including the question of the sources of *jus cogens*, and also consider the relationship between *jus cogens* and non-derogation clauses in human rights treaties.

Thank you, Mr. Chairman.