



Republic of Cyprus

74th Session of the United Nations General Assembly Report of the International Law Commission on the work of its seventy-first session (Agenda Item 79)

Cluster I: Statement on Chapters IV (Crimes against humanity) and V (Peremptory norms of general international law (*jus cogens*))

At the outset, my delegation wishes to thank the Chair of the International Law Commission (ILC), Pavel Šturma, for the thorough presentation of the Report of the ILC on the work of its seventy-first session. Cyprus wishes to comment on Chapters IV (Crimes against humanity) and Chapter V (Peremptory norms of general international law (*jus cogens*)) under Cluster I.

On the topic of **crimes against humanity** Cyprus expresses its appreciation to the Commission and to Special Rapporteur Sean D. Murphy for his work and the adoption of the entire set of the draft articles on second reading, noting that the Commission has recommended the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the articles.

Cyprus remains committed to the fight against impunity and therefore supports the further strengthening of the international legal framework for the prevention, detection, prosecution and adjudication of the most serious international crimes. We acknowledge, in this regard, that there currently is no general multilateral convention establishing a framework for the prevention and punishment of crimes against humanity and the promotion of international cooperation to this end, and that this represents a lacuna, given also the existing frameworks for the crimes of genocide, war crimes and torture. We also recognize that existing frameworks contain only limited provisions for mutual legal assistance and extradition.

Cyprus further recalls that the Rome Statute establishing the International Criminal Court (ICC) primarily regulates the relations between States and the ICC. Within this context we also wish to note that the Rome Statute and other instruments setting up international or hybrid criminal courts or tribunals only address the prosecution of crimes falling under their jurisdiction.

For these reasons, Cyprus sees merit in elaborating a convention on crimes against humanity, on the basis of the draft articles. Such a new set of rules could in our view be complementary to existing treaty structures, as well as to the Mutual Legal Assistance (MLA) Initiative, which seeks to offer an effective mutual legal assistance and extradition framework that would cover the crimes of genocide, war crimes as well as crimes against humanity and which my delegation also supports. In order to avoid duplication, we would encourage a clearer distinction between the respective initiatives.

Turning to the draft articles, Cyprus appreciates the efforts of the ILC to avoid legal conflicts with the Rome Statute. Before further steps are contemplated in the direction of the recommendation of the Commission, we consider it important to address any remaining inconsistencies of the draft articles with the Rome Statute. Ensuring full consistency with the Rome Statute of the ICC is paramount in ensuring the mutual reinforcement of both structures. With this in mind, Cyprus is concerned that the definition of persecution as a crime against humanity in Draft Article 2 (3) (h), does not refer to the ICC connector crimes (i.e. genocide, war crimes and the crime of aggression), which is at odds with Article 7 (1) (h) of the Rome Statute. We moreover hold the view, that the draft articles should include

a clear statement on immunities, consistent with Article 27 of the Rome Statute on the irrelevance of official capacity. Furthermore, while recognizing that a possible new article on reservations would be in the nature of a "final clause" which should be left to States to draft, Cyprus expresses the view that, in following Article 120 of the Rome Statute, no reservations may be made to the possible convention.

Mr. Chairman,

Turning to the topic of **peremptory norms of general international law (*jus cogens*)**, Cyprus would like to thank the Special Rapporteur, Dire Tladi and the Commission for the conclusion of the first reading of the draft conclusions on peremptory norms of general international law (*jus cogens*).

Consistent with the views expressed by my delegation during previous sessions, Cyprus welcomes draft conclusions 10 to 13, which seek to consolidate and affirm the legal effects and consequences of conflict of treaties with peremptory norms of general international law. Cyprus holds the view that these draft conclusions should be wholly consistent with the Vienna Convention on the Law of Treaties, and we are satisfied that this is reflected in the draft conclusions. We are also cognizant of the fact that the effects of *jus cogens* are not limited to the realm of Treaties and are thus pleased that the draft conclusions effectively deal with obligations created by unilateral acts of States, and resolutions, decisions or other acts of international organizations, when these are in conflict with a peremptory norm of general international law.

Furthermore, Cyprus welcomes that no proposed draft conclusion has been put forward with respect to "regional *jus cogens*". *Jus cogens* is by definition universal, as it reflects the fundamental values of the international community and, according to article 53 of the 1969 Vienna Convention on the Law of Treaties, is accepted and recognized as such by the international community of States as a whole. For this reason, the notion of "regional *jus cogens*" cannot be reconciled with *jus cogens* and should therefore be avoided as it may create unnecessary confusion.

Lastly, Cyprus has previously expressed the view that, contrary to the Commission's work on the topic of "Customary international Law", where the elaboration of a list of customary rules would not have been feasible, the comparably limited number of *jus cogens* norms, makes it possible to envisage such an illustrative list. Nonetheless, such an exercise should not proceed in haste. We request the Special Rapporteur and the Commission to continue their work with concern to draft Conclusion 23 and relevant commentary, seeking to offer a non-exhaustive list of norms that the ILC has previously referred to as having the status of *jus cogens* and which according to the said draft Conclusion, is without prejudice to the existence or subsequent emergence of other peremptory norms of general international law (*jus cogens*). In this regard, we also take particular note of the discussion reflected in the report of the Drafting Committee, according to which several members of the committee expressed the views that the list should include other norms.

We request the Special Rapporteur and the Commission to continue their analysis which norms are to be included in the list of peremptory norms and to provide a more thorough reasoning in the commentary why these norms are considered to be peremptory.

I thank you for your attention.