



INDIA
भारत

STATEMENT BY

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ON
AGENDA ITEM 79

**“REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF
ITS SEVENTY-FIRST SESSION”**

AT THE
SIXTH COMMITTEE OF THE 74th SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY

NEW YORK

29 OCTOBER 2019

Mr. Chairman,

At the outset, India would like to thank Mr. Pavel Sturma (Czech Republic) Chairman of the seventy-first session of the International Law Commission, for introducing the Report of the Commission. We thank all Members of the Commission for their valuable contribution to the work of the Commission. We take this opportunity to congratulate the Special Rapporteur Dire D. Tladi, on his extensive efforts that has resulted in completion of first reading of the Draft Conclusions on this topic.

2. We take note of the fourth report of the Special Rapporteur. It essentially considered the question of the existence of regional *jus cogens* and provides a non-exhaustive list of norms including of those previously recognized by the Commission as possessing peremptory character. India takes note of the provisionally adopted draft conclusions forwarded to member states seeking their comments and observations by 2020.

Mr. Chairman,

3. We would like to share our comments on two aspects addressed in the report. First, on the issue of existence of regional peremptory norms. This has been a subject of much debate among international law scholars about its existence and definition. In our considered view, while peremptory norms could be influenced by regional practice of States, the very idea of peremptory norms is that they are universal in nature and application. We would like to put forth the question already raised by Secretary General of AALCO, i.e. whether peremptory norms will still be 'peremptory' if they

apply to some States but not all States. This question merits careful examination.

4. Our second observation is on Draft Conclusion 23 which provides for a non-exhaustive and illustrative list of peremptory norms. The list include: the prohibition of aggression or aggressive force; the prohibition of genocide; the prohibition of slavery; prohibition of apartheid and racial discrimination; the prohibition of crimes against humanity; the prohibition of torture; the right to self-determination; the basic rules of international humanitarian law.

5. In our view, some of the identified peremptory norms are not well-defined in international law. For instance, there is no definition of genocide, right to self-determination and racial discrimination, which has been legally agreed by all member states. Different interpretations as to applicability of these norms exists among member states. Hence, there is a need to have more intense discussion on the list of peremptory norms as provided by the Special Rapporteur.

Mr. Chairman,

6. As regards the topic on 'crimes against humanity', we welcome the fourth report of the Special Rapporteur, Mr. Sean Murphy. The report addresses various actions to be taken by States under their national laws with respect to crimes against humanity (CAH). In this report, the Special Rapporteur has primarily reviewed the comments and observations made by States, International Organizations and others since the adoption, on

first reading in 2017, of the complete set of draft articles on crimes against humanity.

7. The Commission adopted, on second reading, the entire set of draft articles on prevention and punishment of crimes against humanity, comprising a draft preamble, 15 draft articles and a draft annex, together with commentaries thereto.

8. The Commission has recommend the draft articles on prevention and punishment of crimes against humanity to the General Assembly. In particular, the Commission has recommended for elaboration of a Convention by the UN General Assembly or by an International Conference of plenipotentiaries on the basis of the draft articles.

9. In this regard, we reiterate our position that, considering the international mechanisms that are already dealing with the matter, including the International Criminal Court, necessity of having a Convention exclusively addressing crimes against humanity need to be examined. In our view, the Rome Statute provides sufficient legal basis for the domestic criminalization and prosecution of crimes against humanity. In addition, any work on this topic could lead to duplicating the efforts already undertaken in existing regimes.

I, thank you, Mr. Chairman.
