



**PERMANENT MISSION OF THE REPUBLIC OF
SIERRA LEONE TO THE UNITED NATIONS**

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STATEMENT

by

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to the Sixth Committee of the United Nations General Assembly

Agenda Item 79:
“Report of the International Law Commission
on the work of its seventy-first session”

Cluster 1
(Chapters I-V, XI)
Crimes against Humanity
Peremptory Norms of General International Law
(*Jus Cogens*)
Other Decisions

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Chair,

The Republic of Sierra Leone thanks the International Law Commission for its report on the work of its seventy-first session A/74/10. We align ourselves with the statement delivered by my delegation on behalf of the African Group.

Chair,

Sierra Leone appreciates the leadership of **Mr. Pavel Šturma**, Chair of the Commission for the 71st session, and thank him for introducing part I of the ILC's report. We also thank the members of the Bureau, as well as the Special Rapporteurs and chairs of working groups, for their contributions to the achievement of a successful and productive 71st session.

Sierra Leone attaches great importance to the work of the ILC. The Commission continues to play a vital role, assisting the General Assembly, in the promotion of the progressive development of international law and its codification. Its work has been a touchstone for both general and particular areas of international law. In this regard, we welcome the substantial progress made on several key topics on the ILC's current work programme including "crimes against humanity," "peremptory norms of general international law (*jus cogens*)" and "protection of the environment in relation to armed conflicts."

For our intervention today, Sierra Leone would like to offer comments on crimes against humanity, *jus cogens* and the other decisions of the Commission. These remarks are preliminary in nature and thus without prejudice to our final position on these topics.

Chair,

Crimes Against Humanity

Sierra Leone is firmly committed to the global fight against impunity for the most serious crimes of concern to the international community as a whole. We believe that all States should spare no effort to bring to justice those most responsible for genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law.

The international legal framework addressing the core crimes condemned by international law is anchored by several foundational treaties. In particular, the 1948 Genocide Convention, the Four 1949 Geneva Conventions and their two 1977 Additional Protocols. Although we are a party to the Geneva Conventions and their Additional Protocols, as well as the 1998 Statute of the International

Criminal Court, Sierra Leone believes that global accountability efforts could be significantly strengthened by a multilateral treaty on crimes against humanity. Such a treaty will fill a major gap in the current substantive law of international crimes. It will, inter alia, provide much needed clarity and stability to crimes against humanity that so far has only been possible for genocide and war crimes especially if it enhances horizontal cooperation between States in the investigation and prosecution of crimes against humanity.

Against this background, Sierra Leone warmly congratulates the Commission for the adoption, upon second reading, of the 15 draft articles and an annex, together with commentaries, of a draft convention on the prevention and punishment of crimes against humanity. The draft articles appear to reflect an appropriate mix of codification and progressive development of international criminal law, consistent with the mandate and working methods of the Commission. We also take note of the Commission's recommendation at paragraph 42 of the 2019 report regarding the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles.

Sierra Leone wishes to express to the special rapporteur, Mr. Sean Murphy, our deep appreciation and warm congratulations for the excellent contribution he has made to the preparation of the draft articles through his tireless efforts and devoted work and for the results achieved.

We are equally grateful to the Commission for its efforts to address the extensive number of comments received on the first reading draft text, including those from Sierra Leone. We regret that most African States did not comment on the first reading text. This would have shared more of Africa's experience with the challenges of addressing atrocity crimes, including crimes against humanity, in often fragile conflict and post-conflict contexts. Such participation might have even strengthened the text of the draft articles as well as African ownership of the final outcome.

Chair,

Allow us to make a few brief remarks on the substance. Sierra Leone welcomes the changes to preambular paragraph 5 recalling that the prohibition of crimes against humanity is a peremptory norm of general international law; as well as the change to the title of the first reading text, which we advocated for, to better clarify the scope of the draft articles. The revised title now places better emphasis on the equal importance of measures of prevention and punishment of crimes against humanity.

On article 1, concerning scope *ratione materiae*, Sierra Leone understands the Commission's reasons for confining the project to crimes against humanity. Yet, we believe that States would have benefited from the collective legal wisdom of the ILC had the study also encompassed other core crimes such as genocide and war crimes. Nonetheless, given that some States appear ready to address those other crimes as well, we believe that the ILC draft could serve as the guiding inspiration. We encourage the supporters of such initiatives to further explore with the Commission how it could assist in accomplishing the shared goal of strengthening inter-State cooperation against perpetrators of core international crimes.

On the definition of crimes against humanity in article 3, which was essentially borrowed from Article 7 of the ICC Statute, Sierra Leone welcomes the deletion of the connection requirement between the crime against humanity of persecution with the separate crimes of genocide or war crimes. That requirement, which is not part of customary international law and was not reflected in the prior work of the Commission, plays a useful role in the context of the permanent ICC but not a 'crimes against humanity' convention intended to apply at the horizontal level. Indeed, as the International Criminal Tribunal for the former Yugoslavia determined in several cases, the ICC article 7(1)(h) definition of persecution may be indicative of the *opinio juris* of many States but it is not consonant with the wider definition of persecution as a 'crimes against humanity' under customary international law.

Sierra Leone further shares the view of some in the Commission who considered that the retention of the last part "in connection with any act referred to in this paragraph" in article 2(1)(h) was also unnecessary and narrows the scope of acts punishable as persecution.

Sierra Leone also takes note of and appreciates the clarifications to article 2, paragraph 3, and its accompanying commentary. It now makes clearer that the definition of the crime contained in the draft convention is without prejudice to any broader definition of crimes against humanity provided for in any international instrument, in national law, and most importantly also, under customary international law.

Sierra Leone is also pleased with the clarification of the general obligations contained in Article 3. Though implicit in the previous text, it makes expressly clear that each State should indeed bear the obligation not to engage in acts that constitute crimes against humanity. This could in future avoid the types of disputes that arose at the International Court of Justice concerning the scope of this duty in relation to the Genocide Convention.

On the obligation of prevention, in article 4, Sierra Leone would have appreciated the ILC consideration and discussion in the commentaries of the implications of the General Assembly's 2005 World Summit Outcome in relation to the Responsibility to Protect.

As regards Article 5, Sierra Leone welcomes the deletion of the phrase "territory under the jurisdiction of". This recognises, as we explained in our written comments on the first reading text, that transfers of persons by one State to the control of another State may occur regardless of whether or not this involves physical transfer to a different territory.

Chair,

We are still formulating views on the various changes to article 6 concerning individual criminal responsibility. At first sight, given the stated ambition of the Commission to complement the ICC system at the horizontal level, it might have been preferable to retain the first reading textual formulations of paragraph 3 since the provision was modelled on Article 28 of the ICC Statute. The new text, which is inspired by Article 86, paragraph 2, of Additional Protocol I to the 1949 Geneva Conventions, and the ICTY and the ICTR Statutes, could however be sufficient by giving States a measure of flexibility in this regard.

Lastly, as we again explained in our written comments on the first reading text, Sierra Leone would have appreciated the Commission's inclusion of two additional modes of liability that are presently missing from the draft articles. The "incitement" to commit crimes against humanity and "conspiracy" to commit crimes against humanity are both important. They are in fact found in relation to the analogous crime and are prohibited by Article III(b) and (c) of the 1948 Genocide Convention.

Incitement as a form of accessorial liability is well established in customary international law. It is an important form of criminal participation in relation to the crime of genocide, and given the systemic nature of such core crimes, also in relation to crimes against humanity. We believe, as the Commission itself concluded in its prior work, "direct and public incitement" of another individual to commit a crime against humanity should attract criminal responsibility for the perpetrator. We understand that the ILC's choice to not include conspiracy and incitement was not intended to affect the status of these modes of liability under customary international law.

Sierra Leone further appreciates the addition of the new term "thorough" in relation to States' duty to carry out investigations in article 8. The new term serves to emphasise that the competent authorities must pursue a serious and meaningful

investigation whenever there are reasonable grounds to believe that acts constituting crimes against humanity have been or are being committed in any territory under their jurisdiction.

Concerning article 11, regarding the fair treatment of the alleged offenders, we welcome the retention of the term “human rights law” and the addition of the complementary phrase “international humanitarian law”.

On article 12, paragraph 2, regarding victims, witnesses and others, Sierra Leone appreciates the clarification limiting the obligation contained in this paragraph to two types of States: (1) the State that committed the acts that constituted crimes against humanity; and (2) the State where the crimes occurred. My delegation nevertheless remains concerned, as we explained in our comments on the first reading text, about the lack of a definition of “victims” and the seemingly obligatory nature of the duty to provide individual reparations in mass atrocity contexts.

Sierra Leone particularly welcomes the provisions on extradition (article 13) and mutual legal assistance (article 14). Those mini-treaties within the ILC draft will constitute the backbone for any future crimes against humanity convention, providing the legal basis for States to enhance their cooperation with each other at the horizontal level.

Concerning draft article 15, the dispute settlement clause, the crimes against humanity articles could have adopted the same approach of Article IX of the Genocide Convention – as argued by some ILC members. That provision would have established the compulsory jurisdiction of the International Court of Justice for disputes concerning the interpretation and application of the future convention. Experience indicates that this would have been a more appropriate model to borrow for the specific context of crimes against humanity.

Lastly, Sierra Leone continues to note the omission of a monitoring mechanism for the draft treaty. Use of existing mechanisms, such as the UN Office for Genocide Prevention, might have been considered as an alternative. The latter could perhaps have served as a vehicle to address compliance in the absence of a specific ILC proposal for a standalone treaty monitoring body such as those under the UN Convention against Torture or the International Convention for the Protection of All Persons from Enforced Disappearance.

Overall, although we are still studying the final outcome from the Commission and without prejudice to our position in any future negotiations, Sierra Leone can share our general impression that the draft articles adopted by the Commission provide a robust and transparent foundation for a future global

convention on the prevention and punishment of crimes against humanity. We hope that the Commission's excellent and timely work on this topic will in the future be remembered as yet another signal ILC contribution to the development of international criminal law.

Chair,

Turning now to Peremptory norms of general international law (*jus cogens*),

Sierra Leone congratulates the Special Rapporteur, Mr. Dire Tladi, for guiding the Commission's achievement of a milestone on this important topic. We hope to take up the invitation to offer detailed written comments, as requested by the Commission, by December 2020.

On substance, we wish to only highlight three points. **First**, we welcome Draft Conclusion 3 of the first reading text on the general nature of peremptory norms, which identifies the characteristics of *jus cogens* as reflecting and protecting fundamental values of the international community, and affirms that, they are "hierarchically superior" and "universally applicable." We fully endorse this draft conclusion.

Second, we took careful note of the Commission debate concerning the concept of regional *jus cogens*. We note with appreciation the compromise outcome, and also take note of the substance of content of draft conclusion 5, 7, 16-19 and 21 of the first reading text and their commentaries.

Third, we note that Draft Conclusion 23 seeks to resolve the sensitive debate on whether to have a non-exhaustive list of peremptory norms balanced against the methodological challenges inherent in developing such a list. We therefore applaud the Special Rapporteur's effort to find a middle ground: to provide not an original list by the Commission, but rather, a non-exhaustive list of norms that the Commission had, in various commentaries to its prior work on state responsibility and the law of treaties, identified as possessing a peremptory character.

On the content of the list itself, as set out in the annex, Sierra Leone agrees with the Commission that (a) the prohibition of aggression; (b) the prohibition of genocide; (c) the prohibition of crimes against humanity; (d) the basic rules of international humanitarian law; (e) the prohibition of racial discrimination and apartheid; (f) the prohibition of slavery; and (g) the prohibition of torture are important.

We particularly wish to underscore the importance of the last example in paragraph (h) which reaffirms the *jus cogens* nature of the right of self-

determination. The peremptory nature of the inherent right of all peoples to self-determination is not new in the Commission's own work. It should not be called into question.

Chair,

On 'Other decisions' of the Commission

My delegation has four quick points. **First**, Sierra Leone welcomes the Commission's inclusion this year of "sea level rise in relation to international law" into the current programme of work. We congratulate the five co-chairs that have been appointed to lead the Commission's efforts on this important topic.

Second, we also take note of and support the recommendation of the Commission to add two new topics to the long-term programme of work, namely, "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". We thank Mr. Claudio Grossman and Mr. Yacouba Cissé, the authors of syllabuses, for their efforts.

Third, looking ahead to next year and noting the pending completion of two existing ILC topics and the space created for addition of new topics to the current agenda by the completion of crimes against humanity, Sierra Leone would favor the Commission taking up the topic "universal criminal jurisdiction". We already gave our reasons in support during the debate on agenda item 84 concerning "scope and application of the principle of universal jurisdiction" two weeks ago.

Our 2018 and 2019 debate in the Sixth Committee confirms a majority of individual States that have spoken to the issue support the topic. The ILC has the opening to independently move forward its topic, which is similar to but not identical with the Sixth Committee item, under paragraph 2 of the General Assembly Resolution 73/208 which clarified that consideration of the universality issue by the Sixth Committee is without prejudice to its consideration in other forums of the United Nations.

With the first reading on *jus cogens* now completed, and immunity reaching the same penultimate stage next year, there is no substantive overlap that would justify delaying work on universal criminal jurisdiction.

Finally, we fully support the call by the African Group for the Commission to take a more balanced approach to the addition of new topics in the current programme of work and in the selection of its special rapporteurs. It should strive for a balance between traditional and newer topics and take into account

individual State feedback on topics balanced against the level of participation in the debate. We note the relative paucity of members from developing regions of the world, especially Africa, serving as special rapporteurs in the 71-year history of the Commission. Addressing this imbalance could help to enhance the legitimacy and authority of the Commission's work and the perception of international law as a truly universal body of law.

I thank you for your kind attention.