UNITED STATES MISSION TO THE UNITED NATIONS

799 UNITED NATIONS PLAZA ·Statement by the United States NEwYoRK,N.Y.10017-3505 71st General Assembly Sixth Committee Agenda Item 78: Report of the International Law Commission
on the Work of its 68th Session

October 27, 2016

Crimes Against Humanity, Jus Cogens, Protection of the Atmosphere

Crimes Against Humanity

Mr: Chairman, the United States continues to follow with great interest the Commission's work on the topic of"crimes against humanity." Special Rapporteur Sean Murphy brings tremendous value to bear in the Commission's work on this topic, including the challenging questions that this topic raises.

As described in the Commission's work to date, the development.of the concept of
"crimes against humanity" has played a critical role in the pursuit of accountability for some of the most horrific episodes of the last hundred years. Further, the widespread adoption of certain multilateral treaties regarding serious international crimes - such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide - has been a valuable contribution to
international law. Because crimes against humanity have been perpetrated in various places
around the world, including by non-State i;tctors, the United States believes that careful
consideration and discussion of draft articles for a convention on the prevention and punishment
of crimes against humanity could also be valuable.

n

As we have previously noted, this topic -0.0121 Tc 122.61 Tm (we) Tj7.611w993mportanc319.68 Tm (t

2

Drafting Committee, and that the Committee has provisionally adopted parts of these draft conclusions.

We appreciate that this topic ofjus cogens is of considerable intellectual interest and
recognize that a better understanding of the nature of }us cogens might contribute to our understanding of other issues of international law, perhaps most notably in the area of human rights law. However, we continue to have a number of concerns. From a methodological point of · view, we have concerns that only limited international practice exists on important questions, such as how a norm attains jus cogens status, and the legal effect of such status vis-a-vis other rules of international law and domestic law. That limited precedent may make it difficult to draw valid conclusions.

We also have some questions about the second paragraph of draft conclusion 3 proposed
by the special rapporteur, which has not yet been adopted by the drafting committee. This paragraph reads as follows; "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." w·e are concerned that the meaning and purpose of this paragraph are unclear and that descril;>ingjus cogens norms as protecting "ftmdamental values" and as "universally applicable" would open the door to attempts to derive }us cogens norms from vague and contestable natural law principles, without regard to their actual acceptance and recognition by states.

Protection of the Atmosphere

Mr. Chairman, with respect to the topic "Protection of the Environment in Relation to
Armed Conflicts," we acknowledge the significant amount of work that the special rapporteur, Mr. Shinya Murase, has done on thi~ topic. However, we continue to be concerned about the direction it appears to be taking.

Our original concerns, which have only intensified as this topic has progressed, run along
two 'main lines.

First, we did not believe that this topic was a useful one for the Commission to address. Various long-standing instruments already provide general guidance to States in their development, refinement, and implementation of treaty regimes, and, in many instances, very specific guidance tailored to discrete problems relating to atmospheric protection. As such, we were· concerned that any exercise to extract broad legal rules from environmental agreements concluded in particularized areas would not be feasible and might potentially undermine carefully negotiated differences among regimes.

Second, we believed that such an exercise, and the topic more generally, was likely to complicate rather than facilitate ongoing and future negotiations and thus might inhibit State progress in the environmental area.

Accordingly, we opposed

3

which we hoped might prevent the work from straying into areas where it could do affirmative harm. But we have been disappointed. All three reports that have thus far been produced have evinced a desire to re-characterize the understanding and to take an expansive view of the topic. And while we had concerns with many aspects of the draft guidelines provisionally adopted by the Commission this summer, the most serious concerns relate to the purported identification of "obligations" or "requirements" in contravention of the 2013 understanding that work on this topic would not impose new legal rules or principles on current treaty regimes.

Looking forward, we are particularly concerned by the Special Rapporteur's proposed long-term plan of work. If it were to be followed, the work would continue to stray outside the scope of the understanding and into unproductive and even counterproductive areas. For these reasons we call upon the Commission to suspend or discontinue its work on this topic.

Thank you, Mr. Chairman.