



# CZECH REPUBLIC

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## Permanent Mission of the Czech Republic to the United Nations

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**Agenda Item 78**

**Report of the ILC:  
Protection of the environment in relation to armed conflicts  
Identification of customary international law**

**Statement by**

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to the United Nations

New York, November 3, 2014

Mr. Chairman,

In the present statement, the Czech Republic would like to focus on the Chapters X and XI of this year's report of the International Law Commission.

With regard to the topic „Protection of the environment in relation to armed conflicts“ the Czech Republic commends this year's report presented by the Special Rapporteur Ms. Marie G. Jacobsson and supports her three-phased approach to this topic. The Czech Republic recognizes the importance of the topic and its overall purpose. At the same time, the Czech Republic notices certain difficulties and uncertainties in current discussions concerning this topic. The Czech Republic is of the view that the work of the Commission should primarily clarify the rules and principles of international environmental law applicable in relation to armed conflicts, without modifying the law of armed conflicts itself but focusing squarely on the applicability of such principles in the context of armed conflict. The question is whether the norms and mechanisms contained in international environmental law might help to clarify and supplement principles of international humanitarian law relating to the protection of the environment during international and non-international armed conflict. Therefore, a further analysis of the relationship of environmental principles and rules with the situations of armed conflict is required. On the other hand, there are several other issues which should be approached cautiously, namely the consideration of cultural heritage, where a clear differentiation between the protection of environment and the protection of cultural heritage should be made, having regard to existing law on protection of cultural heritage in the event of armed conflict.

Mr. Chairman,

The Czech Republic welcomes the work of the International Law Commission on the topic of “Identification of customary international law”. We commend the significant progress achieved in this initial phase of study, notably the formulation of first 11 draft conclusions presented by the Special Rapporteur in his second report on the topic. We acknowledge the high quality of the report, its comprehensiveness and clarity. We appreciate especially its balanced approach reflecting both universally recognized principles and proposing concrete specifications with respect to practical application. This corresponds well to the principal aim of the topic, i.e. to provide guidance for identification of the existence of a customary international norm, which we regard essential for the practice of international law. The Czech Republic furthermore welcomes the provisional adoption of the draft conclusions by the Drafting Committee and additional suggestions and commends its productive work.

We would like to highlight in particular the preservation of the “two-element” approach, based on the assessment of both practice and the acceptance of practice as law, despite the variable balance between these elements depending on the context and circumstances. We expect the examination of their respective relationship at a later stage of work. We consider practice and *opinio iuris* as constituent elements of an international custom underpinning the integrity of international law.

The Czech Republic recommends to refer to widely recognized concepts of “general practice” and “accepted as law”, in compliance with Article 38.1 (b) of the ICJ Statute. With respect to the first element, we note in the draft conclusion 8, as provisionally adopted by the Drafting Committee, the shift to the recognition of the requirement of consistency as inherent in the concept of generality which, indeed, corresponds to the general definition adopted in the ICJ Statute, and as such we view it as acceptable. Moreover, while recognizing that *jus cogens* norms do not form particular object of this ILC topic, with respect to the general scope

of identification of customary international law we welcome the elimination of the following express reference: “The practice need not be universal” in the draft conclusion 8. The needed degree of appropriate sufficiency is already expressed in the first phrase of paragraph 1.

As concerns the second element, the Czech Republic welcomes the draft conclusions 10 and 11 proposed by the Special Rapporteur in his second report on the topic and praises the clear and illustrative nature of the guidelines on the practical identification of *opinio iuris*.

The Czech Republic expresses its support for the topic of identification of the customary international norm and will continue to participate in future deliberations on this subject.

Thank you, Mr. Chairman.