

Sixth Committee Debate on the
Report of the International Law Commission on the Work of its 70th Session

Statement of the United States of America

*Cluster I - Subsequent agreements & subsequent practice, Identification of
Customary international law, Commemoration and Other decisions*

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*Cluster II – Protection of the atmosphere, Provisional application of treaties, and
Peremptory norms of general international law (jus cogens)*

*Cluster III – Protection of the Environment in Relation to Armed Conflict,
Succession of States in Respect of State Responsibility, and Immunity of State
Officials from Foreign Criminal Jurisdiction*

**Jennifer G. Newstead
Legal Adviser
United States Department of State**

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Thank you, Mr. Chairman.

I would like to thank Mr. Eduardo Valencia-Ospina, Chairman of the Commission, for his introduction of the Commission's report. The U.S. delegation looks forward to this annual debate on these important areas of international law.

Mr. Chairman, I appreciate the opportunity to be here today to comment on the work of the Commission.

Before I begin, I would like to congratulate the Commission on its 70th anniversary. It was an honor to be part of the commemorative events here in New York in May. On behalf of the United States, I extend my thanks to the Members of the Commission for their dedication to international law. Similarly, the United States extends its appreciation to the Office of Legal Affairs, and particularly the Codification Division, for its efforts in this regard, including through critical support for the International Law Commission. Our discussions here in this Committee offer a further reminder of the vital role that the Commission can play in our collective efforts to address today's global challenges.

The celebrations this year have offered an opportunity to reflect on the Commission's contributions to the codification and development of international law. The United States has closely followed the Commission's work since its inception. In its 70 years of work, the Commission has addressed a broad range of issues and produced analyses that provide insights to government lawyers, private practitioners, judges, and academics. At times, the Commission's work has formed the basis for multilateral treaties that have become foundational elements of international law.

More recently, the Commission's work products have become more varied, with fewer instances of proposals for draft treaty articles that States may then decide, after formal negotiations, whether to adopt in the form of a treaty and whether to express their consent to be bound. For example, most of the projects on the Commission's current program take the form of draft guidelines or draft conclusions. While there can be benefits to these different forms of work, including shorter timeframes for completion, the absence of a clear expression of State consent to codification can lead to confusion as to what status should be afforded to the ILC's work. The Commission is, of course, not a legislator that establishes rules of international law. Rather its contributions focus on documenting areas in which States have established international law or proposing areas in which States might wish to consider establishing international law. In this respect, the Commission has an important role to play in ensuring its work is well supported by relevant practice and properly distinguishes between efforts to codify international law and recommendations for its progressive development. As reflected in Article 15 of the ILC Statute, "codification of international law" is appropriate for "fields where there already has been extensive State practice, precedent and doctrine." At the very least, certainly we can agree that where there is little or no state practice identified in support of a particular principle, the Commission's work must clearly indicate that it is not purporting to reflect existing law. Unfortunately, there are several examples contained within projects discussed in the Commission's report of proposals that seem to disregard this fundamental principle.

States also have an important role to play, to ensure the Commission's work remains responsive to States and reflective of State practice. For its part, the United States has supported the work of the Commission by engaging with the full range of the topics on the Commission's agenda, commenting in this Committee on the Commission's work, and nominating highly qualified candidates for election to the Commission. We also encourage active engagement with the ILC by other governments. A productive relationship between governments and the ILC is vitally important to the relevance and continuing vitality of the Commission's work. In that regard, we were pleased that the ILC held half of its session in New York this year and we hope that this practice continues in the future, as I understand that the many side events during that period enabled worthwhile and stimulating informal discussions among ILC members and Sixth Committee delegates.

Mr. Chairman, I would like begin with the topic **Identification of Customary International Law**. The United States takes this opportunity to recognize and express its appreciation for the efforts of the Commission, and in particular its Special Rapporteur, Sir Michael Wood, on this important topic.

The United States also provided written comments earlier this year on the ILC's Draft Conclusions for this project. While we agree with many of the propositions in the Draft Conclusions and commentaries, we identified serious concerns regarding a few issues and those concerns remain. I will not reiterate each of the comments contained in the United States' prior submission, but will highlight a few issues of particular significance.

As a general matter, the United States believes that identifying whether a rule has become customary international law requires a rigorous analysis to determine whether the strict requirements for formation – a general and consistent practice of States followed by them out of a sense of legal obligation – are met. Such State practice must generally be extensive and virtually uniform, including among States particularly involved in the relevant activity. This high threshold required to establish that a particular rule is customary international law is important to all aspects of analyzing or otherwise identifying customary international law. In this regard, the statement in Draft Conclusion 8 that practice must be “sufficiently widespread and representative, as well as consistent” should not be misunderstood as suggesting that a different or lower standard applies; any such suggestion would reflect an inaccurate view of the law. More generally, the Draft Conclusions and commentary should not be read to suggest that customary international law is easily formed. Suggesting otherwise could risk lending credence to the view, held by some, that the exercise of identifying the content of customary international law has become too facile, with experts too readily extending international law beyond what is supported by the consistent practice of States, which risks imposing outcomes that do not reflect the policy choices of their citizens expressed through their respective State’s practice.

The United States has previously noted a few areas in which the Draft Conclusions and commentaries go beyond the current state of international law such that the result is best understood as proposals for progressive development on those issues. We regret that there is not clearer distinction in those areas between the proposals for progressive development and material more clearly reflective of existing law. We believe the Commission should have made this distinction plain in this project and that it should do so in other projects. Failure to distinguish between

codification and suggestions for progressive development creates risk that users of these materials will misunderstand them or afford them greater weight than is merited by the authority on which they are based. For these reasons, readers of these materials will need to review them with careful scrutiny, noting what authority and state practice have been identified in support of the proposition addressed.

One area in which the Draft Conclusions depart from existing law merits particular mention. The United States believes that Draft Conclusion 4, on “Requirement of practice”, is an inaccurate statement of the current state of the law to the extent that it suggests that the practice of entities other than States contributes to the formation of customary international law. In particular, the statement in paragraph 1 that “it is primarily the practice of States that contributes to the formation, or expression, of rules of customary international law” inaccurately suggests that entities other than States contribute to the formation of customary international law in the same way as States. In addition, the statement in paragraph 2 that “[i]n certain cases, the practice of international organizations also contributes to the formation, or expression, of rules of customary international law” inaccurately suggests that international organizations may contribute to the formation of customary international law in the same way as States.

It is axiomatic that customary international law results from the general and consistent practice of States followed by them out of a sense of legal obligation. This basic requirement has long been reflected in the jurisprudence of the International Court of Justice. It is also reflected in the practice of States in their own statements about the elements required to establish the existence of a customary international law rule. There is no similar support for the claim in Draft Conclusion 4 that the practice of international organizations – as distinct

from the practice of member States that constitute those international organizations – may, in some cases, similarly contribute to the formation of customary international law. It is noteworthy in this regard that, unlike other of the draft conclusions in this project, there is virtually no support provided in the commentary for Draft Conclusion 4. Accordingly, the claim in Draft Conclusion 4 with regard to a direct role for the practice of international organizations in the formation of customary international law can only be understood as a proposal by the Commission for the progressive development of international law. Even when appropriately understood as a proposal for progressive development, the position advanced in Draft Conclusion 4 with regard to the role of international organizations has numerous flaws. Among other things, it contains no explanation as to which international organizations might be relevant when identifying a rule of customary international law, no explanation as to how the *opinio juris* of an international organization might be identified, and no explanation as to whether a lack of support from international organizations can defeat the formation of a rule that is otherwise accepted by States. For these and other reasons, the United States cannot endorse the ILC's proposals on this issue.

Mr. Chairman, the United States also has followed with great interest the Commission's work on the topic of **Subsequent Agreements and Subsequent Practice in the Interpretation of Treaties**. The United States takes this opportunity to express its appreciation for the efforts of the Commission, and in particular its Special Rapporteur, Georg Nolte, on this important topic.

Earlier this year, the United States provided extensive written comments on the ILC's Draft Conclusions for this project. The text of those Draft Conclusions contained in the ILC's report has changed very little from that on which the United States commented previously. The United States takes this opportunity to reaffirm the views expressed in its prior comments.

In general, the United States agrees with most of the propositions contained in the Draft Conclusions. We have had greater difficulty, however, evaluating the voluminous commentary that accompanies the Draft Conclusions, and are unable to assess its general accuracy and reliability. As with any ILC product of this nature, the utility of the Draft Conclusions and commentaries on any particular issue should be understood to be only as great as the authority and state practice identified in support of the proposition addressed. Once again, I will not reiterate each of the comments contained in the United States' prior submission, but instead will highlight a few issues of particular significance.

Draft Conclusion 10 asserts that subsequent practice of parties to a treaty establishing their agreement with regard to the treaty's interpretation "requires a common understanding regarding the interpretation of a treaty which the parties are aware of and accept." Although this statement is correct with regard to subsequent agreements under Article 31(3)(a) of the Vienna Convention on the Law of Treaties, it is not correct with respect to subsequent practice under subparagraph Article 31(3)(b). Rather, the parties' parallel practice in implementing a treaty, even if not known to each other, may evidence a common understanding or agreement of the parties regarding the treaty's meaning and fall within the scope of Vienna Convention Article 31(3)(b). Indeed, this is one of the primary differences between a subsequent agreement and subsequent practice –

that is, subsequent practice “establishes” (to use the term in Vienna Convention Article 31(3)(b)) the agreement of the parties; the Vienna Convention does not require that the agreement exist independently.

Draft Conclusion 12 addresses subsequent agreements and subsequent practice in respect of the interpretation of the constituent instruments of international organizations. Paragraph 3 of Draft Conclusion 12 asserts that the “practice of an international organization in the application of its constituent instrument may contribute to the interpretation of that instrument when applying articles 31, paragraph 1, and 32” of the Vienna Convention. The draft commentary explains that the purpose of this provision is to address the role of the practice of an international organization “as such” in the interpretation of the instrument by which it was created. In other words, it refers, not to the practice of the States party to the international organization, but to the conduct of the international organization itself.

As the United States has previously observed, an international organization is not a party to its own constituent instrument. Accordingly, the practice of an international organization “as such” cannot constitute subsequent practice of a party to the agreement of the kind contemplated by Article 31, paragraph 1 of the Vienna Convention, and cannot contribute to establishing the agreement of the parties regarding the interpretation of the instrument. The Draft Conclusion’s assertion to the contrary is incorrect.

Draft Conclusion 13 addresses the role of expert treaty bodies in connection with subsequent agreements and subsequent practice. Expert treaty bodies are not parties to treaties, and accordingly their views cannot constitute subsequent

practice regarding the interpretation of a treaty within the meaning of Vienna Convention Article 31(3)(b). The commentary to Draft Conclusion 13 appropriately emphasizes this important point, and nothing in Draft Conclusion 13 itself should be understood to the contrary. In general, the views of expert treaty bodies may be helpful to States parties to treaties to the extent that those views are well reasoned and persuasive. However, States ultimately decide whether to reflect such views in their interpretation and application of treaties, and accordingly such views are relevant to subsequent agreements and subsequent practice in the interpretation of treaties only to the extent that states have done so.

Before concluding, Mr. Chairman, I would like to address the Commission's decision to include one new topic in its current program of work and two new topics in its long-term program.

The topic to be included in the Commission's current program of work, "**General principles of law**," is referred to in Article 38(1)(c) of the International Court of Justice's statute as one of the sources of international law the Court is to apply. While we agree that the nature, scope, function and manner of identification of "general principles of international law" could benefit from clarification, we are concerned that there may not be enough material in terms of State practice for the Commission to reach any helpful conclusions on this topic.

The two topics that the Commission added to its long term program of work are "universal criminal jurisdiction" and "sea-level rise in relation to international law." With respect to the topic, "**universal criminal jurisdiction**," we have concerns about the ILC taking up this topic while it is still under active

deliberation in the Sixth Committee, including in a working group, and are concerned about the parameters of any potential study. We do not consider this topic ripe for active consideration.

With respect to the topic, “**sea-level rise in relation to international law**,” we are concerned that the broad topic, as proposed to the ILC, does not meet two of the Commission’s criteria for selection of a new topic, namely that “the topic should be at a sufficiently advanced stage in terms of State practice to permit progressive development and codification” and “the topic should be concrete and feasible for progressive development and codification.” In particular, we question whether the issues of Statehood and protection of persons as specifically related to sea level rise are at a sufficiently advanced stage of State practice. We also share the concerns others have expressed regarding the number of topics on the Commission’s active agenda. However, if the Commission does move this topic to its current program of work, we would agree that a Study Group, as is currently proposed, would be the most appropriate mechanism to examine it.

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Mr. Chairman, I will now turn to the topic of “Peremptory norms of general international law (*jus cogens*).”

The United States takes this opportunity to recognize the efforts of the Commission, and in particular its Special Rapporteur, Professor Dire Tladi, for the work devoted to the topic on *jus cogens*. We appreciate that this topic is of considerable interest and recognize that a better understanding of the nature of *jus cogens* might contribute to our understanding of its role in the field of international law.

However, we continue to have a number of serious concerns with this topic, including with respect to working methods and analytical approach. In terms of working methods, it is incumbent upon the Commission not only to ensure that States have meaningful and sufficiently frequent opportunities to provide their views to the Commission, but also for the Commission to take those views into account. Unfortunately, the current working method for this project has not been conducive to either pursuit. To the contrary, there appears to have been an intentional departure from standard practice that has delayed referral to the Commission's plenary of the draft conclusions and delayed the drafting of any draft commentaries, which then severely limits the ability of States to follow and engage with the Commission's work. This working method is especially problematic given that the project is not intended to result in a final outcome that will be negotiated and adopted by States.

As such, at this time the United States provides preliminary comments on only a few of the proposed draft conclusions as they were apparently adopted in the Drafting Committee, while noting our intent to provide further comments in the future once the Commission adopts the draft conclusions with commentary. Yet we urge the Commission to return to the normal working method whereby incremental parts of a topic are adopted by the Commission, as that would allow all concerned to give full and careful consideration to this important topic as it develops.

In terms of analytical approach, we have previously questioned whether there is sufficient international practice or jurisprudence on important questions, such as how a norm attains *jus cogens* status and the legal effect of such status vis-à-vis other rules of international and domestic law. These questions have already generated contentious debate even within the Commission as well as differing views among States. The Special Rapporteur has acknowledged that the relative

lack of State practice in this area presents particular challenges, yet he does not appear to view that as a limiting principle with respect to several proposed draft conclusions. This is of particular concern where, as here, there has been insufficient engagement by the Commission with States on the topic to date, thereby precluding States from reacting either favorably or unfavorably to Commission-adopted text.

In short, the clear divergence of views on the sensitive questions addressed in the Third Report, an absence of widespread or consistent State practice, and the lack of any mechanism to facilitate a clear expression of State consent to codification all point to a need for a cautious approach. In this regard, the United States observes that the proposal for the Commission to conclude a first reading of the draft conclusions at its next session appears quite premature.

More generally, the absence of state practice or jurisprudence on the vast bulk of the questions being addressed in this project has clear implications for the role and function of any Draft Conclusions that are ultimately adopted. Though framed as “Draft Conclusions,” the statements contained in this project are not grounded in legal authority, but rather reflect an effort to imagine through deductive reasoning ways in which certain principles could apply in hypothetical circumstances. This kind of approach neither reflects the state of the law as it exists, nor provides insight into ways in which the law is developing. Rather, it can only be understood as reflecting proposals by the Commission for possible law for consideration by States. It will be for States to assess whether they find the proposals useful, and any weight or influence the Draft Conclusions may have will depend on whether they are ultimately accepted by and reflected in the practice of States. In this regard, the Commission should consider whether the broader cause of international law, which has depended in important respects on a carefully nurtured consensus

of legitimacy, would be better served by greater adherence to traditional analytical principles.

For purposes of my remarks today, I will focus primarily on one of the draft conclusions that starkly illustrates the methodological concerns I have just mentioned: draft conclusion 17.

Draft conclusion 17 states that binding resolutions of international organizations, including those of the UN Security Council, “do not establish binding obligations if they conflict with a peremptory norm of general international law”. The Special Rapporteur cites virtually no evidence of State practice to support the claim that States can disregard their obligations under the UN Charter to carry out the binding decisions of the Security Council based on a unilateral assertion of a conflict with a norm of *jus cogens*. Yet Draft Conclusion 17 could have quite serious implications. This claim carries the risk of leading to meritless challenges to the binding nature of Security Council resolutions, thereby undermining their implementation and the effective operation of the collective security framework established under the UN Charter. This is not a theoretical concern, not least because there is no clear consensus on which norms have *jus cogens* status.

The United States also understands that two other draft conclusions proposed by the Special Rapporteur that suffered from these significant analytical concerns – draft conclusions 22 and 23 – will be set aside in the Drafting Committee and replaced with a single “without prejudice” clause. This is a welcome development. For example, the idea that immunity does not apply to *jus cogens* violations is particularly problematic, given the lack of clarity on which norms have *jus cogens* status. The proposal, if adopted, would remove immunity as a result of the mere allegation of a crime, apparently without any procedural protections. Moreover, whether there are certain crimes for which immunity from national jurisdiction will

not apply has already been debated in the ILC's topic on "Immunity of State officials from foreign criminal jurisdiction." The United States is of the view that any discussion of this issue should be confined to that project.

Finally, with respect to future work, the United States takes note of the proposal to consider "regional *jus cogens*". We question the utility of such an effort and share the concerns expressed by others that this concept seems in tension with the view that *jus cogens* norms are "accepted and recognized by the international community as a whole."

Mr. Chairman, with respect to the topic "**Protection of the atmosphere**," we have taken note of the Draft Guidelines that have been adopted at first reading. As we have noted here on previous occasions, the United States has found many elements of this topic problematic. We intend to study the Draft Guidelines closely and submit comments and observations as requested by December 2019.

With respect to the topic "**provisional application of treaties**," we thank the Special Rapporteur, Mr. Juan Manuel Gomez Robledo, for his fifth report on this topic. We take note that the ILC has completed its first reading of a draft "Guide to Provisional Application of Treaties" and commentaries thereto. We look forward to reviewing the Draft Guide in detail with a view to providing written comments by the December 15, 2019. We note that the Special Rapporteur intends to continue work on this project in the next session leading to the possible adoption of

model clauses, in which case we wonder whether States will be provided sufficient time to comment on those clauses prior to a second reading.

In any event, as with other projects, we will be particularly interested in the extent to which the Draft Guide and commentaries accurately reflect existing state practice in this area. While careful, rigorous studies of state practice may serve as a useful guide to promote understanding of the law, products that mix proposals for progressive development of the law with statements otherwise intended to reflect the state of the law risk creating confusion.

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Mr. Chairman, I will now turn to the topic “**Immunity of State Officials from Foreign Criminal Jurisdiction.**”

The United States appreciates the efforts of Special Rapporteur Concepción Escobar Hernandez to develop reports regarding the important and complex topic of the immunity of State officials from foreign criminal jurisdiction. We would like to comment specifically on the Special Rapporteur’s recently published Sixth Report, while also highlighting several points the United States has made in previous years regarding the Commission’s work on this topic.

At the outset, the United States would like to reiterate its general accord with the Commission’s approach to immunity *ratione personae*. The United States agrees that Heads of State, Heads of Government, and Foreign Ministers are immune from foreign criminal jurisdiction while serving in office on account of their status. Similarly, where the Sixth Report addresses procedural issues with respect to those enjoying immunity *ratione personae*, the United States generally has not found the Special Rapporteur’s conclusions to raise significant concerns.

In contrast, as the United States noted last year, the approach that both the Fifth and Sixth Reports have taken with respect to immunity *ratione materiae* is not reflective of any settled customary international law on the issue. It is difficult to make generalizations from State practice, in part due to the sparsity of publically available State practice and *opinio juris* on this issue, and the complexity inherent in decisions involving prosecutorial discretion. The Commission's categorical pronouncements in terms of immunity *ratione materiae* cannot, then, be said to rest upon customary international law.

Notably, we do not agree that Draft Article 7 is based on any "clear trend" in State practice. We also take note of the unusual circumstances associated with the adoption of Draft Article 7; it was, according to the Report, "adopted by a vote and not by consensus, as [is] the Commission's usual practice."

Certainly, the United States agrees that genocide, crimes against humanity, war crimes, the crime of apartheid, torture, and enforced disappearances are serious crimes that should be punished. The United States does not agree, however, that the Commission was right to adopt Draft Article 7 provisionally given the many serious concerns expressed both inside and outside the Commission. The United States reiterates that Draft Article 7 is in tension with the notion that immunity is procedural, rather than substantive, in nature, and that it operates regardless of gravity of the alleged conduct.

Draft Article 7 creates the false impression that the exceptions are sufficiently established in State practice such that they form customary international law—and they simply do not.

Turning to the Sixth Report's focus upon procedural aspects of immunity, the United States would like to comment on certain of the procedural issues addressed in the Report.

First, the United States notes that, as the Sixth Report identifies, there is a range of State practice in terms of the stages that various sovereigns follow in the course of criminal proceedings. For that reason, the United States wishes to caution restraint before attempting to formulate a general rule regarding timing that would apply to States with potentially very different criminal procedures.

Second, with regard to the acts that States can take that would implicate immunity, there is an assertion that it is "impossible" to locate rules of international treaty law or customary international law regarding a number of potential acts that State officials could take. Yet, at the same time, the Report attempts to identify firm rules regarding whether immunity would be implicated by such acts. This section of the Report could benefit from further deliberation. For example, the Report cites no international legal support or State practice for its assertion that "the rules on immunity do not apply when detention is a purely executive act carried out in the context of the exercise of criminal jurisdiction by a court in the forum State." In the U.S. system, the executive branch of the government is distinct from the judicial branch, and exercises of criminal jurisdiction by a court would not be considered a "purely executive act," as described by the Report. Again, the United States wishes to underscore that it would be imprudent to draw sweeping conclusions in an area where there is unclear State practice and a dearth of statements of *opinio juris*, and where there is a diversity of national systems of relevant criminal law.

Finally, with respect to the determination of immunity, the United States again emphasizes the riskiness of asserting generalizations from what the Special

Rapporteur appears to recognize as varied State practice. Both with respect to the identity of the State entity tasked with making immunity determinations and the analytical steps that precede such a determination, State practice is inconsistent and precludes drawing conclusions of a universal nature. We would note in this regard that the Report states that, in the United States, the Executive Branch is able to make the determination of immunity though a suggestion of immunity binding on the court. We merely note that the practice cited in the Report is applicable only in civil cases and not in the criminal context. In the criminal context, determinations regarding immunity could be made by the Executive as part of the exercise of prosecutorial discretion. Moreover, it is not clear from the Report that all States analyze “official capacity” in precisely the same manner, and thus, again, it would be preferable to avoid drawing conclusions in an area that does not yet reflect a consistent pattern of state practice. Rather than focus on specific domestic procedures, which might vary significantly according to the criminal law of each State, it may be prudent to consider any relevant international standards and the need for a State to apply principles of immunity consistently across the various organs of its government.

The United States looks forward to the Special Rapporteur’s next report and its analysis of the remaining issues of procedure associated with immunity of State officials from foreign criminal jurisdiction, and we appreciate her time and efforts devoted to this difficult topic.

Mr. Chairman, with respect to the topic “**Protection of the Environment in Relation to Armed Conflicts**,” the United States would first like to recognize the

contributions to this topic of the prior Special Rapporteur, Ms. Marie Jacobsson. We would also like to welcome the new Special Rapporteur on this topic, Ms. Marja Lehto, and express our thanks for her efforts in drafting a report that recognizes the complexity and controversial character of many of these issues.

I would like to make three points. First, it is critical that the draft principles and commentary reflect the fact that international humanitarian law (or “IHL”) is the *lex specialis* in situations of armed conflict. The extent to which rules contained in other bodies of law might apply during armed conflict must be considered on a case by case basis. We welcome the Special Rapporteur’s acknowledgment of this in her report, but believe that the draft principles and commentary should more clearly acknowledge the role of IHL as *lex specialis*.

Second, as stated on previous occasions, we remain concerned that the Commission is not the appropriate forum to consider whether certain provisions of international humanitarian law treaties reflect customary international law. We emphasize that such an undertaking would require an extensive and rigorous review of State practice accompanied by *opinio juris*.

Third, we are concerned that several of the draft principles are phrased in mandatory terms, purporting to dictate what States “shall” or “must” do. Such language is only appropriate with respect to well-settled rules that constitute *lex lata*. There is little doubt that several of these principles go well beyond existing legal requirements, making binding terms inappropriate. I want to highlight a few examples in this regard.

- Draft principle 8 purports to introduce new substantive legal obligations in respect of peace operations.
- Draft principle 16 purports to expand the obligations under the Convention on Certain Conventional Weapons to mark and clear, remove, or destroy explosive remnants of war to include “toxic or hazardous” remnants of war. The draft commentary appears to recognize that this principle exceeds existing legal requirements, noting, “Draft principle 16 aims to strengthen the protection of the environment in a post-conflict situation.” Moreover, it correctly acknowledges that the term “toxic remnants of war” does not have a definition under international law.
- We are likewise concerned that the draft principles applicable in situations of occupation go beyond what is required by the law of occupation.

Finally, with respect to the topic “**Succession of States in Respect to State Responsibility**,” we thank the Special Rapporteur, Pavel Šturma, for his efforts in producing the Second Report. That report seeks to address certain general rules, mainly the issues of transfer of the obligations arising from the internationally wrongful act of the predecessor State.

We appreciate that the Commission’s work on this topic may lead to greater clarity in this area of the law. However, we are not confident that the topic will enjoy broad acceptance or interest from States, in view of the small number of States that have ratified the Vienna Convention on Succession of States in Respect of Treaties

and Vienna Convention on Succession of States in Respect of State Property, Archives, and Debts.

The issues raised by the topic of state succession in respect of state responsibility are complex, and careful and thoughtful consideration by governments will be required as the Special Rapporteur continues to develop the draft articles.

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Thank you all very much for your attention, as I know it is not the standard course to deliver statements on all three clusters at one time. Once again, we thank the Members of the Commission for their work. We look forward to engaging with the Commission, the Sixth Committee, and fellow UN Member States on the Commission's projects.

Thank you, Mr. Chairman.

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