



Sixth Committee
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Agenda item n. 78 - Report of the International Law Commission

First Cluster

Statement of Italy

Delivered by Mr Stefano Zanini

Mr. Chairman/Madame Chair,

In our intervention today, we will address two topics: “Peremptory norms of general international law (*jus cogens*)” and “Protection of the environment in relation to armed conflicts”.

Allow us to first address the topic of “**Peremptory norms of general international law (*jus cogens*)**” and express our appreciation to Special Rapporteur, Mr. Dire Tladi, for the extensive work done and for the consideration given in his fifth report to the comments and observations received from Governments, including our own.

Italy wishes to congratulate the International Law Commission for adopting on second reading the entire set of draft Conclusions on the Identification and Legal Consequences of Peremptory Norms of General International Law (*jus cogens*), consisting of 23 draft conclusions and an annex, together with commentaries thereto. It represents an important milestone in the contribution of the International Law Commission to the clarification and development of international law.

In this respect, we welcome the reformulation of the title in “Draft Conclusions on the Identification and Legal Consequences of Peremptory Norms of General International Law” as suggested in our written observations submitted in 2021.

As already mentioned in our oral statement in 2019 and in our written observations in 2021, Italy shares the view of the Special Rapporteur with regard to Conclusion 3 on **the hierarchical superiority of *jus cogens* norms in relation to other ordinary rules of international law**. To this end, we continue to attach utmost importance to the autonomous categories of **peremptory norms of general international law and *erga omnes* obligations**, which protect the fundamental interests of the international community as a whole.

Turning to **Part Two**, Italy endorses the general approach of the draft conclusions to the process of identification of *jus cogens* norms and fully appreciates the effort of the Special Rapporteur and the

Commission to the understanding of such a complex topic. However, we would have preferred further clarification on the concept of “evidence” and, more specifically, on the individual assertions by States, as mentioned in the commentary, that **a norm is accepted and recognized as one from which no derogation is permitted.**

As far as **Conclusion 8** is concerned, **Italy welcomes the inclusion of the constitutional provisions among the forms of evidence of acceptance and recognition listed under the conclusion in question.** However, generally speaking, **the commentary could have made a more remarkable reference to the constitutional provisions as interpreted and applied by the jurisprudence of constitutional courts.** Such an approach would have had the advantage to take into proper consideration the practice of different legal systems and the fundamental principles enshrined in the Constitution of various nations.

In addressing **Part Four** and, more specifically, **Conclusion 22** and **Conclusion 23**, we partly appreciate the reasons behind the decision to elaborate a non-exhaustive list, given the possible future development in the recognition and assertion of norms of *jus cogens*. At the same time, **we are not fully convinced** by the choice of the Commission, as clearly expressed in the Commentary, **not to address** the thorny issue of **the legal consequences of some peremptory norms such as those prohibiting genocide, war crimes and crimes against humanity.**

In light of the wide range of the forms of evidence, which also include constitutional provisions and decisions of national courts, **the Conclusions could have provided further guidance to States with regard to the interrelation between the peremptory character of *jus cogens* norms and its consequences on the principle of sovereign equality of all States, especially on the immunity of State and State officials from foreign jurisdiction.**

Mr Chairman/Madam Chair,

I will now turn to the topic of **“Protection of the environment in relation to armed conflicts”.**

First of all, Italy would like to commend the Special Rapporteur, Ms. Marja Lehto, for her excellent work in the elaboration of the Draft Principles on Protection of the Environment in relation to Armed Conflicts. Also, we wish to take this opportunity to thank the previous Special Rapporteur, Ms Marie Jacobsson, for having initiated the studies of the Commission on this important subject.

In addition, Italy would like to congratulate the International Law Commission for adopting, on second reading, the entire set of draft principles on protection of the environment in relation to armed conflicts, comprising a draft preamble and 27 draft principles, together with commentaries thereto.

As regards **Part One**, and in particular **draft Principle 1**, we have appreciated the insertion of the draft Preamble and the accurate description of the **scopes *ratione temporis* and *ratione materiae*** of the draft principles and **the reference made to their application in cases of occupation.**

With regard to **Part Two**, Italy welcomes the adoption of **draft Principle 9**, which affirms the compensability under international law of environmental damage *per se* and reflects the general rule that internationally wrongful acts or omissions of States give rise to international responsibility and entail the duty of the offender to make full reparation for the injury caused.

Concerning **draft Principle 13**, we would have seen with favor the elaboration in the Commentary of useful parameters and concrete examples that could have helped specify the definition of *widespread, long term and severe damage*.

As to **Part Three**, regarding the principles applicable during armed conflicts, with respect to **draft Principle 14**, Italy particularly appreciates the application of the cardinal principles of humanitarian law with reference to the protection of environment. Regarding in particular the **principle of precautions**, Italy is of the view that the latter should be interpreted in such a way so as to ensure compliance with both the principle of prevention and the precautionary principle, which are at the core of international environmental law. Regarding the **principle of proportionality**, Italy is of the view that no attack directed at a military objective should ever be considered proportionate when it is intended, or may be expected to cause widespread, long-term and severe damage.

Furthermore, let me focus on **draft Principle 18**, we wonder why the text of the Principle does not refer to the additional potential designation of areas of environmental importance by virtue of different instruments of international law other than agreements, similarly to the language of draft Principle 4. Nonetheless, Italy takes note and appreciates the points made by the Commission, as specified in the Commentary, which suggest that the term “agreement” should be understood in its broadest sense as including mutual as well as unilateral declarations accepted by the other party, treaties and other types of agreements, as well as agreements with non-State actors.

I will now turn to **Part Four** on principles applicable in situations of occupation. Italy welcomes the insertion of this specific part.

With regard to **draft Principle 21**, concerning the **prevention of transboundary harm**, Italy welcomes the expansion of its spatial scope of application, resulting from the rewording of the final part. At the same time, we are of the view that the topic of environmental transboundary harm, because of its importance in international law, should have been addressed also in relation to contexts other than situations of occupation.

Finally, as we mentioned in the Statement on this topic that we delivered in 2019, Italy observes that the Commission could have made more specific reference to the application of the core **principle of self-determination of peoples in the use of natural resources in the context of occupation**. Even so, Italy acknowledges that the commentary contains valuable explanation as to the notion of “protected population” and the definition of the obligations of an occupant with regard to the natural resources situated in occupied territories.

Thank you Mr. Chairman/Madam Chair.