

# Canada

**International Law Commission Report (Cluster one)**  
**Canada Statement**

**UNGA 77-Sixth Committee (October 2022)**

**UNGA 77 6C – CANADA STATEMENT**  
**INTERNATIONAL LAW COMMISSION REPORT (CLUSTER**  
**ONE)**

**25 October 2022**

Mr./Madam Chair,

Thank you for the opportunity to speak today regarding this year's Report of the International Law Commission. We welcome this latest work and the important ongoing contributions that the Commission makes toward the maintenance and strengthening of the international rules-based order.

Mr./Madam Chair,

Turning to the list of topics covered in Cluster 1, I would first like to briefly address the Draft Principles on Protection of the Environment in Relation to Armed Conflicts, and the Commentaries thereto. To begin, I wish to thank the Commission for providing States with the opportunity to submit comments on an earlier version of the Draft Principles and Commentaries. As the makers of international law, it is imperative that States engage and be engaged with the Commission's serious work.

Relating to Canada's comments, we were pleased to see that a number of our concerns have been either fully or partially addressed by this latest version of the Draft Principles and Commentaries, most notably in the case of the removal of the former Draft Principle 15 on "environmental considerations." In other cases, however, our comments remain relevant and bear repeating on this basis.

Mr./Madam Chair,

First, and in general, Canada wishes to reiterate our view that in the absence of corresponding State practice and *opinio juris*, treaty obligations applicable during any international armed conflict should not be presented as customary ones applicable during a non-international armed conflict. As such, Canada continues to regret the Commission's decision to avoid distinguishing between international and non-international armed conflicts, with respect to the applicability of the Draft Principles.

In Canada's view, this decision detracts from the overall coherence of the Draft Principles, especially in Part III where many of these Principles are based on articles from Additional Protocol 1 to the Geneva Conventions. Moreover, Canada continues to regret the use of mandatory verbs in the context of several Draft Principles that either seek to create new norms, or to extend well-settled rules. In our view, mandatory verbs should be reserved for Draft Principles constituting *lex lata*.

Mr./Madam Chair,

In terms of more specific comments, Canada wishes to reemphasize, first and foremost, our concern about the discussion of Common Article 1 of the Geneva Conventions in the Commentary to Draft Principle 3. The Commentary states that Common Article 1 is “interpreted to require” that States “exert their influence” to prevent and stop violations of the “law of armed conflict.” Canada does not accept that Common Article 1 entails a duty for States that are not a party to an armed conflict to ensure that all State and non-State parties to that armed conflict respect the Geneva Conventions.

Mr./Madam Chair,

Turning to the Draft Conclusions on Identification & Legal Consequences of Peremptory Norms of general international law, or *jus cogens*, Canada thanks the Commission for its work on this important issue. The Commission has played an influential role in the development, acceptance, and mainstreaming of *jus cogens* in international law.

We note that a discussion is required in the first instance with respect to several of the Draft Conclusions. In particular, Draft Conclusion 5 requires further consideration, as treaties are only binding as between their parties. In and of themselves, treaties cannot form a basis for the existence of *jus cogens*. While treaties can be an important source for understanding how different groups of States view certain norms and emerging norms, they cannot on their own inform customary international law obligations.

Although we do not agree with all aspects of the Draft Principles and Commentaries, and believe that further work is necessary to refine and clarify some of them, Canada nevertheless wishes to conclude by underscoring our sincere appreciation for the Commission's valuable contributions and tireless efforts over many years on this important topic. Canada remains committed and looks forward to working closely with the Commission on this and similarly important endeavours in the future.

Thank you, Mr./Madam Chair.