



CZECH REPUBLIC

Permanent Mission of the Czech Republic to the United Nations

77th Session of the General Assembly
Sixth Committee

Report of the International Law Commission on the work of its seventy-third session

Cluster I:
Peremptory norms of general international law (jus cogens)
Protection of the environment in relation to armed conflicts
Other decisions

Statement by

Mr. Martin Smolek

Deputy Minister of Foreign Affairs

New York, October 25th, 2022

Check against Delivery

One Dag Hammarskjöld Plaza, 48th floor
885 Second Avenue, New York, NY 10017
tel.: +1 (646) 981 4001, fax: +1 (646) 981 4099
www.mzv.cz/un.newyork

Madam/Mr .Chair,

The Czech delegation welcomes the completion of the second reading of the draft conclusions on the topic „**Peremptory norms of general international law (jus cogens)**“. We commend the Commission for its work on this topic and appreciate outstanding contribution of the Special Rapporteur, Mr. Dire Tladi, to the preparation of the draft conclusions. The outcome of Commission's work on this topic significantly contributes to the understanding of the legal concept of ius cogens and provides useful guidance for its application in the system of international law.

Madam/Mr .Chair,

As we already expressed in our oral as well as written comments, we concur with the methodology of the Commission, which focuses on the structural aspects of peremptory norms of general international law and builds on the approach to peremptory norms applied in the Vienna Convention on the Law of Treaties and in Commission's work on other relevant topics.

We agree with the adopted definition and characterization of peremptory norms of general international law as universal applicable and hierarchically superior rules of international law. These characteristics stem from the fact that peremptory norms reflect and protect the fundamental values base of the international community, „the conscience of mankind“. We also concur with the conclusions on the identification of peremptory norms, as well as on their legal consequences in respect of other rules of international law. In this regards we can mention with approval the two-criteria requirement for the identification of peremptory norm, the emphasis on concrete evidence of acceptance and recognition of norms as peremptory, or underscoring the role of States for the identification of peremptory norms of general international law.

We also agree, in general, with the conclusions concerning legal consequences of peremptory norms of general international law in respect of treaties, reservations and other sources of international law. On the other hand, we still have doubts whether the Commission sufficiently clarified all aspects of the principle of separability in case of a normative conflict of a new peremptory norm with existing rule of customary international law or with an obligation created by unilateral acts of states.

Madam/Mr .Chair,

In its written comments on the conclusions adopted on first reading, the Czech Republic expressed certain doubts and posed questions concerning the draft conclusion 21 on „procedural requirements“ (now titled „recommended practice“). Our delegation appreciates the comments by the Special Rapporteur addressing the concerns of our delegation and agrees that the envisaged procedure would be relevant only in case of giving effect to the claim on the international level. Although we retain doubts concerning the applicability of certain aspects of the suggested procedure in practice, we appreciate

the fact that the reformulated conclusion now makes clear that its provisions represent only non-binding, recommended practice.

Further, as regards the inclusion of the list of examples of peremptory norms in the Annex, our delegation is still not convinced that such listing is the appropriate way for the identification of such norms. We regard as very useful that the Commission, in its commentary to Article 23, clearly summarized references to peremptory norms of general international law contained in its previous work on other topics. Our delegation also agrees that the list of peremptory norms is without prejudice to other norms that the Commission may have referred to as having a peremptory character or to other norms that currently have the status of jus cogens but have not been referred to previously by the Commission. On the other hand, the listed description of the relevant peremptory norms sometimes may not reflect differing formulations of the norm in the previous work of the Commission, or its scope may not be entirely clear. For example, in the commentary to the listed rule of the prohibition of aggression, the Commission also refers to its earlier conclusions that not only the prohibition of aggression, but also the prohibition of the use of force as such constitutes a „conspicuous example of a peremptory rule in international law“. Therefore the Czech Republic had suggested to include the list of peremptory norms identified by the Commission in its previous work on other topics only in the commentary to the draft conclusion.

Madam/Mr. Chair,

Now I would like to turn to the topic „**Protection of the environment in relation to armed conflicts**“, The Czech Republic would like to express its appreciation and gratitude to the Commission and the Special Rapporteur, Ms. Marja Lehto, as well her predecessor, Ms. Marie G. Jacobsson, for their work on this topic. Particularly, we commend both Special Rapporteurs for their guidance in this undertaking and Ms. Maria Lehto for successful completion of both readings of the draft principles.

The Czech Republic is well aware of increasing importance of environmental protection on all levels. It is evident that armed conflicts belong to major threats to environment, since they cause extensive degradation and destruction and affect the life and environment in various areas of the world. These facts underscore the need to consolidate and strengthen the legal framework governing the protection of the environment also in relation to armed conflicts. In this regard, the draft principles certainly constitute very important initiative and contribution to contemporary international law and its possible progressive development. We believe that they can substantively complement other initiatives in this area, such as ICRC's updated 2020 Guidelines on the Protection of the Natural Environment in Armed Conflict. We also hope that these initiatives will lead to better implementation of existing rules and, where appropriate, to development of new rules enhancing the protection of environment in relation to armed conflict.

Madam/Mr. Chair,

The Czech Republic commented in writing on the draft principles adopted by the Commission on first reading. We read with interest and appreciate the reactions and explanations by the Special Rapporteur to our suggestions and concerns. The draft principles adopted on second reading contain several amendments to the previous draft. We note that, for example, principle 13 adopted on second reading expressly mention the limitations to the use of methods and means of warfare or that the application of certain principles was extended to subjects other than States. In our opinion, these amendments improve the draft.

At the same time, the Czech Republic still regards as valid certain of its concerns expressed previously. Inter alia, it seems that, in case of some draft principles, there is not a clear dividing line between the accepted rules of international law and the efforts of the Commission to contribute to the progressive development of international law. Further, sometimes it might not be clear which conclusions are applicable also in non-international armed conflict. We also wish to mention that, when reading the draft principles, one has to be aware of the fact that the legal obligations concerning protection of the environment have to be interpreted and understood in the legal context of all other relevant rules applicable in armed conflicts.

Madam/Mr. Chair,

In conclusion, I would like to comment briefly on **the programme of work of the Commission**. The Czech Republic welcomes the decision to include the topic “Settlement of international disputes to which international organizations are parties” in its programme of work and congratulates Mr. August Reinisch for his appointment as Special Rapporteur for this topic. We also note with satisfaction the comment by the Commission that the scope of this topic should include also certain disputes of a private law character, to which international organizations are parties. We believe that the Special Rapporteur’s and Commission’s work will consolidate and clarify both theoretical and practical aspects of this topic and will be of benefit to practice of States and international organizations in this area.

Further, the Czech Republic notes with interest the inclusion of the topics “Prevention and repression of piracy and armed robbery at sea” and “Subsidiary means for the determination of rules of international law”. We congratulate Mr. Yacouba Cissé and Mr. Charles Chernor Yalloh for their appointment as Special Rapporteurs and await with interest the work and outcomes of the Commission’s discussions on both these topics.

The Czech Republic also welcomes that the Commission included in its long-term programme of work the topic “Non-legally binding international agreements“. The increasing practical relevance of legally non-binding international instruments is confirmed by the fact that this topic is currently being discussed also by other international expert bodies.

In this regard, we would like to note that, in the discussions in the Sixth Committee, the Czech Republic has repeatedly proposed to refer the topic “Universal criminal jurisdiction” to the International Law Commission. A few years ago, the Commission itself included the topic in its long-term programme of work. Universal criminal jurisdiction is subject of intense discussions, is relevant for State practice and meets the criteria for the selection of topics of the Commission. Therefore, we would like to support the inclusion of this topic on the active programme of the Commission.

Thank you, Madam/Mr Chair.