



PERMANENT MISSION OF ROMANIA  
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**77<sup>th</sup> Session of the General Assembly of the United Nations  
Sixth Committee**

*Agenda item 77*

**Report of the International Law Commission  
(73rd Session, A/77/10)**

*Cluster I*

*Chapter IV – Peremptory norms of general international law (jus cogens)*

*Chapter V – Protection of the environment in relation to armed conflicts*

*Chapter X – Other decisions and conclusions of the Commission*

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## ***General remarks***

*At the outset, I would like to extend this delegation's congratulations to you for assuming the chairmanship over our Committee and assure you of our continued cooperation and support.*

At the same time, I would like to express our appreciation to the Chair of the International Law Commission for the comprehensive presentation of the report on this year's ILC session and to all members of the ILC for their continued efforts in ensuring a good progress of work on topics on the agenda of the Commission, relevant for the progressive development and codification of international law.

The ILC has made good progress on the topics on its current agenda, concluding its work on *Peremptory norms of general international law (jus cogens)* and the *Protection of the environment in relation to armed conflicts* and significantly advancing its consideration of other topics, among which the *Immunity of State officials from foreign criminal jurisdiction* which remains (and even became) of high practical significance. The consideration of the second issues paper under the *Sea-level rise in relation to international law* marks equally important progress on a topic that is highly relevant from the perspective of the current or anticipated challenges faced by the international community.

Before going into the consideration of the chapters that make up Cluster 1, I would like to strongly encourage the ILC to resume the traditional exchange of information with the committees/commissions within the regional organizations having competence in public international law, a tradition that seems to have been affected for unjustly long time by the COVID 19 pandemics. I specifically refer to the dialogue that the ILC traditionally has with, *inter alia*, the Committee of Legal Advisers on Public International Law of the Council of Europe, which is a pan-European committee that reunites twice a year the legal advisers from all the States within the Council of Europe and from a number of States and international organizations having an observer status to the Council of Europe or to the CAHDI. We have on the CAHDI agenda a standing item that allows the opportunity for an exchange of views with the Chair of the ILC at our last annual meeting. This interactive dialogue has proven, along the years, very efficient in connecting the activity of the ILC with the work on public international law topics undertaken by the CAHDI and also in better explaining to States, in advance of the debate within the Sixth Committee, of the challenges each of the topics raised during the debate and of the expectations from States in terms of assistance that can be provided to the ILC in its consideration of various topics. Therefore, this dialogue should continue and should, also, be included as part of the ILC yearly session, as it was done before.

*Chairperson,*

## ***Chapter X – Other decisions and conclusions of the Commission***

My delegation notes with appreciation the decision of the ILC to include in its programme of work the topics *Settlement of international disputes to which international organizations are parties* and

*Prevention and repression of piracy and armed robbery at sea.* My delegation has constantly pleaded for their consideration by the ILC, given the relevance of these topics to interstate relations and the functioning of the international organizations and their pertinence from the perspective of the ILC's mandate. We also welcome the inclusion in the ILC's programme of work of the topic *Subsidiary means for the determination of rules of international law.* We look forward to the first papers to be presented by the Special Rapporteurs to which these topics were assigned and to the initiation of the debate within the Sixth Committee.

We are very pleased to see that the topic *Non-legally binding international agreements* has made its way into the long-term programme of work of the Commission. It is indeed a topic that the CAHDI also has under scrutiny, at this point amassing, on the basis of a questionnaire, state practice in relation to this type of documents, the assessing of which will guide the further consideration of the topic. In any case, the work that we undertake in the CAHDI could be of assistance to the work of the ILC on the topic, should there be a decision to include it in the ILC's current programme of work; this congruence of preoccupations confirms, once more, the added value of the dialogue in between the ILC and regional organizations and of the interconnection between their activities, preventing, thus, a fragmented approach.

In spite of our fondness for this topic, we reiterate our position that the *Universal jurisdiction* topic be privileged and placed on the current programme of work of the ILC. The expertise of the ILC would assist the Sixth Committee in its legal assessment of the application of the principle of universal jurisdiction, giving a more concrete perspective to the outcome of such deliberations. Beyond that, the ILC was specifically created to tackle topics of this nature, which require more clarity on the status of the law, to the benefit of States.

*Chairperson,*

With regard to the **Chapters IV and V** of the report, my delegation would like to submit the following views:

#### ***Chapter IV – Peremptory norms of general international law (jus cogens)***

On *Peremptory norms of general international law (jus cogens)* we recognize with great appreciation the efforts put in by the Special Rapporteur, prof. Dire Tladi, in finalizing what we assess to be a useful instrument in the process of identifying *jus cogens* norms, which is and remains a difficult endeavor. We do consider that the guiding Conclusions, in spite of them being rather theoretical, offer methodological assistance to States in determining whether a certain norm has attained *jus cogens* status.

Such determination draws important legal consequences and we are pleased to note that the draft Conclusions try to address in a comprehensive manner all types of legal situations arising out of such a determination.

We commend, as well, the effort of the Special Rapporteur and of the Commission in ensuring consistency with the provisions of the *Vienna Convention on the Law of Treaties* as well as with the previous work of the Commission, ample references being made to draft *Articles on State Responsibility for Internationally Wrongful Acts*.

On the substance of the draft Conclusions, the Romanian delegation remains reserved especially on the following aspects:

- the identification of general principles of law as sources for peremptory norms of general international law (draft Conclusion 5);
- the inclusion of the procedural rule in Conclusion 21 which, in spite of the assurances in the commentaries that it does not create a basis for the ICJ jurisdiction, is formulated in a way that does not avoid such assumption; moreover, as the Commission itself recognized in the commentaries, the dispute resolution provisions do not operate as a matter of customary law;

While we have not opposed the inclusion of the indicative list of *jus cogens* norms in the final product of the ILC on the topic, we regret the lack of ambition on the part of the Commission, which should have made an effort to include in that list at least all norms which it had previously determined as being peremptory. This effort would have contributed to further shading light on the precise methodology the Commission has previously used to make such determinations.

## ***Chapter V - Protection of the environment in relation to armed conflicts***

Turning to the topic *Protection of the environment in relation to armed conflicts*, Romania wishes to unreservedly express its gratitude to the Commission's efforts in developing the draft Principles on protection of the environment in relation to armed conflicts, and fully supports their widest possible dissemination. The tireless efforts and devoted work of the Special Rapporteurs, Mrs. Marja Lehto and Marie G. Jacobsson, need to be particularly acknowledged.

While my delegation subscribes to the points made by the EU in the intervention on this particular topic, I would like to make some remarks in our national capacity.

The adoption of the draft Principles could not have been timelier, as we all see the environmental costs of conflicts around the world. In Europe, we came to see these costs, including on the environment, in very concrete terms with the aggression of the Russian Federation against Ukraine. As a riparian State to the Black Sea we are concerned by the long-term and severe damage to the environment caused in the Black Sea basin by the Russian targeting of heavy industry and energy installations.

Therefore, this delegation sees the effort of the ILC to systematize the law in the field of environment protection in the wider context of an armed conflict – meaning from pre-conflict to post-conflict situations – as largely reflecting the realities of modern warfare and as serving current interests of States.

Indeed, approaching the protection of the environment *in relation* to the conflict in a broader framing has moved the focus beyond the traditional application of international humanitarian law (that applies as *lex specialis* *during* the armed conflict) by including various legal developments related to the protection of the environment that occurred over the last decades.

Although in general we agree with the approach taken by the Special Rapporteur and the Commission in relation to this topic, there are few general points that I would like to make:

1. There would be a need for more precision in the identification within the text of the commentaries to the draft Principles in between the ones that reflect established international law and the ones aiming at further developing the law in the field (progressive development). This distinction should be reflected as well in the formulation of the draft Principles.
2. In relation to draft Principles that are intended to reflect customary international law, more precision is needed in their formulation in order not to be misleading – for instance in relation to draft Principle 9 on state responsibility, which we do understand as applying in the context of a violation of an IHL norm and not for situations in which the damage to the environment occurred with no violation of any legal norm applicable in situation of armed conflict. In other instances, the precise nature of the norm as reflecting customary international law has not been settled; hence, the draft Principles and the corresponding commentaries should reflect this with more accuracy (for instance draft Principles 7 and 23).
3. The draft Principles would have benefitted of more precision should they have included provisions addressed specifically to non-international armed conflict; in particular it would have been useful if provisions better identifying the responsibility and accountability of non-State armed groups concerning damage to the environment were included in the text.

To conclude, this delegation reiterates its appreciation to the Commission and to the Special Rapporteur for the work done in relation to this challenging topic and opine that they serve the general interest of consolidating the protection of the environment in relation to armed conflicts.

Thank you!