

Sixth Committee
United Nations General Assembly 77th Session

Statement of Ireland on Agenda item 77:
Report of the International Law Commission on the work of its
seventy-third session

**Cluster I – Chapters of the ILC report: I–III, IV (Peremptory norms of
general international law (*jus cogens*)), V (Protection of the
environment in relation to armed conflicts) and X (Other Decisions)**

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Peremptory norms of general international law (*jus cogens*):

Mr/ Madam Chair,

1. I wish to thank you for the opportunity to speak on the first cluster of issues contained in the International Law Commission's report. I will begin with the topic of **Peremptory norms of general international law (*jus cogens*)**.
2. Ireland generally welcomes the adoption by the Commission of its Conclusions on the Identification and legal consequences of peremptory norms of general international law (*jus cogens*) and the completion of its work on this important topic under the leadership of Special Rapporteur Diré Tladi. We have agreed for some time that the Commission's work in this area should indeed take the form of Conclusions. In our view this form is the correct one where the Commission surveys the existing law in a given area and then presents its conclusions as to the content of that law. Equally, it seems to us that the format of Conclusions is not the appropriate vehicle for proposals for progressive development of the law, which might more accurately be described as 'Recommendations'.
3. We note that only a small number of changes has been made to the draft Conclusions since their preliminary adoption. This in our view raises questions in respect of a small number of these Conclusions. For instance, it is unclear to us whether the term 'the international community of States as a whole' used in Conclusion 2 and the term 'the international community' in Conclusion 3 are intended to mean the same thing, and if so then why consistent terminology was not used. If they are not the same then we must ask what the difference between them is.
4. More importantly, however, we struggle with the concept of modification of a peremptory norm when such a norm is one from which by definition no derogation is possible. It is difficult to see how any peremptory norm can be modified given that any such modification would necessarily entail a derogation from the original norm. While the Vienna Convention on the Law of Treaties also contemplates subsequent modification of a peremptory norm, in reality it seems to us that no peremptory norm will ever be capable of modification, although of course new peremptory norms may emerge in areas not currently the subject of them.

5. We also wonder whether, as set out in Conclusion 5, treaty and general principles of law do actually serve as bases for peremptory norms. In our view, to the extent that any treaty does so it is because it has codified pre-existing customary law which is the authentic basis of peremptory norms. Equally, to the extent that general principles inform customary law they will have a role to play but we doubt that in their own right they can in fact serve as a basis for peremptory norms.
6. Of those changes made to the draft Conclusions since preliminary adoption we note in particular the important change made to Conclusion 21 which is presented now as 'recommended procedure' rather than 'procedural requirements'. This however is a recommendation rather than a presentation or codification of existing law and we wonder in the circumstances whether this should really be entitled a Conclusion, or even included in the Conclusions at all – a separate section of 'Recommendations' may have been more appropriate here.

Mr / Madam Chair,

7. Notwithstanding these comments Ireland welcomes the fact that the Conclusions took as their starting point Articles 53 and 64 of the Vienna Convention on the Law of Treaties, and that they build on these and the Commission's earlier work on State Responsibility to provide a relatively clear guide to both the identification of peremptory norms and to the legal consequences of serious breaches of them. We particularly welcome the clear manner in which the Conclusions set out – in Conclusion 19 - the particular legal consequences of serious breaches of peremptory norms. States shall cooperate to bring any such serious breach to an end and they shall not recognise as lawful a situation created by such a serious breach.
8. We note also the adoption of the Annex to the Conclusions which sets out a non-exhaustive list of peremptory norms to which the Commission has previously referred in its earlier work. Importantly, Conclusion 23 makes it clear that this list is without prejudice to the existence or future emergence of other peremptory norms. As my delegation was one of those that expressed some reservations about such a list during the course of the Commission's work, and in particular the risk of it being misunderstood as comprehensive, we welcome the clarification provided by Conclusion 23. Accordingly we regard the list in the Annex as purely

illustrative even if, in Ireland's view, each of the norms listed is indeed a peremptory norm of general international law.

Protection of the environment in relation to armed conflicts:

9. I will now turn to the topic of Protection of the environment in relation to armed conflicts.
10. Ireland welcomes and appreciates the Commission's elaboration of draft principles on protection of the environment in relation to armed conflicts. These draft principles and their accompanying commentaries are a valuable contribution to our understanding of how international humanitarian law (IHL) and other areas of international law apply in this context. We are particularly grateful to the Special Rapporteur, Ms Marja Lehto, and to her predecessor, Ms Marie Jacobsson, for their work on the elaboration of the principles.
11. Ireland notes that some of the draft principles are presented as codifying applicable law while others are recommendatory in nature and intended to contribute to the progressive development of the law. While the use of the term 'principle' with respect to both types might tend to confuse the reader, Ireland nevertheless appreciates that efforts were made to distinguish between the two types in the accompanying commentaries. However, as with the use of the term 'Conclusions', more thought may need to be given to Commission nomenclature for the products of its work.
12. Ireland welcomes the Commission's analysis of how certain aspects of IHL apply in relation to the protection of the environment, and of how other areas of international law, including international human rights and environmental law, complement and inform the application of IHL in relation to the protection of the environment in situations of armed conflict and occupation. This analysis has led to the elaboration of the draft principles in Parts Three and Four which, together with their commentaries, will be of valuable assistance to states and other relevant actors endeavouring to understand the application of relevant international law in this context and to comply with it.

13. Ireland appreciates the Commission's consideration of the comments made by us and others on the previous text of the draft principles in Parts Three and Four, and the amendments consequently made by the Commission, which have in our view significantly improved these draft principles and their commentaries. Ireland particularly welcomes the amendment of draft principle 13(2) and of draft principle 14, and of their commentaries.
14. As for those of the draft principles applicable outside situations of armed conflict and occupation (Parts Two and Five) that are expressed as binding rules of international law, Ireland remains of the view that the commentaries on draft principles 7 and 26 (formerly 27) do not adequately demonstrate legal bases for those draft principles as binding rules. Ireland is similarly of the view that the commentary on draft principle 5, which was previously expressed as recommendatory but is now expressed as binding, does not adequately demonstrate a legal basis for that draft principle as a rule of law.
15. As for the draft principles of a recommendatory nature, Ireland remains supportive of draft principles 6, 8, 22 (formerly 23), 24 (formerly 25), 25 (formerly 26) and 27 (formerly 28). Ireland does not, at this stage, take a position in relation to any of the remaining recommendatory draft principles, but intends to give these principles further consideration.

I thank you, Mr / Madam Chair