

Delegation of the Republic of Korea to the United Nations
Report of the International Law Commission on the work of the seventy-third session (Agenda
77)
Sixth Committee, 77th session of UNGA
New York

Peremptory norms of general international law

Mr. Chairman,

On behalf of the delegation of the Republic of Korea, I would like to welcome the adoption of the second reading text on “Peremptory norms of general international law (*jus cogens*)” consisting of 23 draft conclusions, annexes and related commentaries. In particular, our deep gratitude goes to the Special Rapporteur and Chairperson of this year's session of the ILC, Mr. Dire Tladi, who has contributed to the success in this subject, as well as all the members of the Commission.

It can no longer be denied that, in the 21st century, *jus cogens* exists in the international community, as in all national legal systems. My delegation believes that the scope of this subject should be extended to cover not only the law of treaties but also State responsibility, relationship between sources of international law and other areas of international law.

My delegation takes note that the Commission decided in its 73rd session to change the title to “Identification and legal consequences of peremptory norms of general international law (*jus cogens*)”. Such change seems appropriate as the new title shows more clearly how *jus cogens* can be established and that the focus is on the legal effects of *jus cogens*.

We also note that the positions or titles of some draft conclusions have been changed. For example, the position of the draft conclusion entitled “Nature of peremptory norms of general international law (*jus cogens*)” was moved from conclusion 3 in the first reading text to conclusion 2 in the second reading text. Such relocation seems appropriate in the context of the entire project.

My delegation also agrees to the change made to the title of Conclusion 21 from “Procedural requirements” to “Recommended Procedure”. Indeed, when we consider the potential reservations about article 66 (Procedures for judicial settlement, arbitration and conciliation) of 1969 VCLT, the previous title “Procedural requirements” was not accurate.

On the other hand, my delegation would like to point out that some parts are still too vague for implementation and open to interpretation. One example is that paragraph 2 of Conclusion 7 (international community of States as a whole) is different from the first reading text. The second reading text stipulates (quote) “Acceptance and recognition by a very large and representative majority of States is required...” (unquote) The modifier “representative” has

been added after “very large”. It is not clear whether this change is intended to raise the threshold for identifying *jus cogens* or merely to encompass regions, legal systems and cultures. Another example is that, in draft conclusion 19, the meaning of the term “serious breach” seems unclear, although the term comes from para.2 of Article 41 of 2001 State Responsibility entitled “Special consequences of a serious breach of an obligation arising from a peremptory norm of general international law” and para.17 of the commentary tries to explain the meaning. (Report of the ILC, 2022, p.78)

The Korean government believes that the Commission's recommendation to widely disseminate the second reading to Member States through the United Nations General Assembly is appropriate and necessary for practitioners and those engaging in international relations.

Protection of the environment in relation to armed conflicts

My delegation welcomes the adoption of the Draft Principles on the Protection of the environment in relation to armed conflicts comprising a Preamble and 27 Principles, together with commentaries thereto, on the second reading.

My delegation would like to express our sincere appreciation to Ms. Marja Lehto for her outstanding contribution to the draft and to all ILC members for their tireless efforts and devoted work. My delegation also appreciates the valuable contribution of the previous Special Rapporteur, Ms. Marie G. Jacobsson, to the work on this topic.

My delegation appreciates the third report presented by the Special Rapporteur, which includes suggestions for the revision of each draft principle reflecting the comments and observations received from governments, international organizations, and civic groups including the ICRC. My delegation takes note that comments received from international organizations and civic groups are given weight in this revision, while views from governments are not always in accord.

My delegation welcomes the insertion of a Preamble, which usefully serves as an introduction to the Principles. We believe the Preamble will provide an opportunity to recall the broader connections to this topic.

My delegation supports a linguistic improvement to the draft Principles through consistency in using phrases such as “to prevent, mitigate and remediate harm to the environment” in Principles 2, 6, 7 and 8. We also support a concise approach to deleting Principle 15, which has been merged into Principle 14, since they are closely related.

The Korean government notes the deletion of the qualifier “natural” before “environment” in the provisions of Part Three (Principles 13, 14 and 15). My delegation finds that some States prefer using the broader term “environment” throughout the draft Principles (for instance,

Spain, Nordic countries, Belgium and Spain), while other States insist on using the narrower term “natural environment” (for instance, France and the UK). Earlier on, we suggested using “natural environment” so as not to cause any uncertainty in the meaning and the *ratione materiae* of these draft Principles. My delegation still considers that the term “natural environment” should be used since it is consistent with existing international humanitarian law, particularly with respect to draft Principles in Part Three. By omitting “natural” and using “environment” as a stand-alone term, my delegation believes that these Principles have been turned into to *lex ferenda* from *lex lata*.

The draft Principles contain provisions of different normative value, some of which can be seen to reflect customary international law, while others have a more recommendatory nature. The Korean government therefore supports the final form of the work as “draft principles.” In the form of draft principles, the work of the ILC may provide appropriate guidance to States and relevant actors in practice and contribute to the progressive development of international law.

My delegation supports the recommendation made by the Commission to the General Assembly and also supports commending the draft principles to not only States but also to international organizations and all those who may be called upon to deal with these subjects.

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