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Chair: Mr. Afonso . . . . . (Mozambique)

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22-24087 (E)

The meeting was called to order at 10 a.m.

Agenda item 77: Report of the International Law Commission on the work of its seventy-third session (A/77/10)

1. **The Chair** invited the Committee to begin its consideration of the report of the International Law Commission on the work of its seventy-third session (A/77/10). The Committee would consider the Commission's report in three parts, beginning with the first part, which would cover chapters I to III (the introductory chapters), chapter X (Other decisions and conclusions of the Commission), chapter IV (Peremptory norms of general international law (*jus cogens*)) and chapter V (Protection of the environment in relation to armed conflicts).

2. **Mr. Tladi** (Chair of the International Law Commission), in a pre-recorded video statement, said that, in 2020, on the recommendation of the Sixth Committee and despite concerns expressed in some quarters, the General Assembly had decided, exceptionally, to extend the terms of office of the members of the Commission by one year, given that the Commission had been unable to meet in 2020 owing to the coronavirus disease (COVID-19) pandemic. During its seventy-third session, even as the pandemic continued to take its toll and in a precarious global environment, the Commission had made remarkable progress in its work. He would follow recent practice and introduce the Commission's whole report in one statement.

3. Introducing the first cluster of chapters of the report, he said that, as shown in chapter II, the Commission had concluded the second reading on the topic "Peremptory norms of general international law (*jus cogens*)" and had adopted the entire set of draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), comprising 23 draft conclusions and an annex, together with commentaries thereto. It had also concluded the second reading on the topic "Protection of the environment in relation to armed conflicts" and had adopted the entire set of draft principles on protection of the environment in relation to armed conflicts, consisting of a draft preamble and 27 draft principles, together with commentaries thereto. On the topic "Immunity of State officials from foreign criminal jurisdiction", the Commission had adopted, on first reading, 18 draft articles and a draft annex on immunity of State officials from foreign criminal jurisdiction, together with commentaries thereto.

4. The Commission had made substantial progress on the topic "Succession of States in respect of State responsibility", following its decision to prepare draft guidelines instead of draft articles, and was close to concluding its work on the topic entirely. It also expected to conclude its work on the topic "General principles of law" in the near future and had made progress on the topic "Sea-level rise in relation to international law".

5. Given the number of topics completed at the seventy-third session or expected to be completed soon, the Commission had decided to include three new topics in its current programme of work: "Settlement of international disputes to which international organizations are parties", for which Mr. August Reinisch had been appointed Special Rapporteur; "Prevention and repression of piracy and armed robbery at sea", for which Mr. Yacouba Cissé had been appointed Special Rapporteur; and "Subsidiary means for the determination of rules of international law", for which Mr. Charles Chernor Jalloh had been appointed Special Rapporteur. The Commission had requested the Secretariat to prepare memorandums on those three topics and on sea-level rise in relation to international law. It had also decided to include the topic "Non-legally binding international agreements" in its long-term programme of work; the syllabus for the topic, prepared by Mr. Mathias Forteau, was annexed to the Commission's report.

6. With a view to improving its working methods, the Commission had re-established a Planning Group to consider its programme, procedures and working methods, which in turn had decided to re-establish the Working Group on methods of work. Owing to lack of time, the Working Group had been unable to complete its work and would continue to meet in 2023. The Commission had also provided to the General Assembly information concerning the establishment of a trust fund to support the work of the Special Rapporteurs, particularly those from developing countries, which the Assembly had requested in paragraph 34 of its resolution 76/111. With respect to cooperation with other bodies, the President of the International Court of Justice had addressed the Commission virtually on 1 June 2022. Regrettably, in view of the time pressures created by the working methods required during the pandemic, the Commission had once again been unable to have its traditional exchanges of information with the African Union Commission on International Law, the Asian-African Legal Consultative Organization, the Committee of Legal Advisers on Public International Law of the Council of Europe, and the Inter-American Juridical Committee. However, it had been able to have

an informal exchange of views with the International Committee of the Red Cross on 21 July 2022. On 1 June 2022, the Commission had observed a moment of silence in memory of Judge Antônio Augusto Cançado Trindade and, on 4 August 2022, it had convened a memorial in honour of the memory of Mr. Christopher Pinto, former Chair of the Commission.

7. The Commission had decided that its seventy-fourth session would be held in Geneva from 24 April to 2 June and from 3 July to 4 August 2023. It had also requested the Secretariat to begin making arrangements for part of a session to be held in New York during the next quinquennium. In that context, Commission members from Africa, Asia and Latin America had raised questions regarding the obtaining of visas from States hosting the Commission and had expressed concerns with respect to inequality in the issuance of visas.

8. He acknowledged the invaluable assistance of the Codification Division of the Office of Legal Affairs in the technical and substantive servicing of the Commission. The Commission had been particularly pleased to receive the Legal Counsel of the United Nations and to resume the in-person annual briefings on the activities of the Office of Legal Affairs. The Commission also recognized the integral role of the Secretariat in its work.

9. Introducing the topic "Peremptory norms of general international law (*jus cogens*)'', which was addressed in chapter IV of the report, he said that, in undertaking the second reading of the topic, the Commission had had before it the fifth report of the Special Rapporteur (A/CN.4/747) and also comments and observations received from Governments (A/CN.4/748). The basic structure of the set of draft conclusions adopted on second reading was similar to that of the first-reading text, except for the title, which, on the basis of comments from States, had been changed to "draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*)", to better reflect the scope of the text. The second-reading text contained introductory provisions (draft conclusions 1 to 3); addressed the identification of peremptory norms of general international law (*jus cogens*) (draft conclusions 4 to 9) and their legal consequences (draft conclusions 10 to 19); and contained other provisions of a general nature (draft conclusions 20 to 23). In addition, an annex provided a non-exhaustive list of peremptory norms, based on norms previously recognized by the Commission as possessing a peremptory character.

10. Part One contained three draft conclusions. Draft conclusion 1 defined the scope of the draft conclusions, while draft conclusion 2 described the general nature of *jus cogens* as norms that reflected and protected the fundamental values of the international community, that were hierarchically superior to other norms and that were universally applicable. Draft conclusion 3 defined *jus cogens* as norms of general international law accepted and recognized as norms from which no derogation was permitted, as stated in article 53 of the Vienna Convention on the Law of Treaties.

11. In Part Two of the text, the criteria set out in draft conclusion 4 for the identification of a *jus cogens* norm – namely, a norm of general international law and a norm accepted and recognized as one from which no derogation was permitted and which could be modified only by a subsequent norm having the same character – were drawn from the definition of *jus cogens* in draft conclusion 3. With respect to the first criterion, draft conclusion 5 stated that customary international law was the most common basis for *jus cogens* norms, but that treaty provisions and general principles of law might also serve as bases for such norms.

12. The rest of Part Two set out various other elements for the identification of *jus cogens*: the meaning of "acceptance and recognition", set out in draft conclusion 6; what was meant by "the international community of States as a whole", set out in draft conclusion 7; what constituted evidence of acceptance and recognition of *jus cogens*, set out in draft conclusion 8; and subsidiary means for the determination of the peremptory character of norms of general international law, set out in draft conclusion 9.

13. Part Three of the draft conclusions addressed various aspects of the legal consequences of *jus cogens*. Draft conclusion 10 covered matters relating to treaties in conflict with a *jus cogens* norm, including intertemporal questions; draft conclusion 11 addressed questions of separability of treaty provisions conflicting with a *jus cogens* norm; draft conclusion 12 covered the consequences of the invalidity and termination of treaties conflicting with a *jus cogens* norm; and draft conclusion 13 addressed the absence of effect of reservations to treaties on *jus cogens* norms. Draft conclusion 14 addressed situations of rules of customary international law conflicting with *jus cogens* norms. Draft conclusion 15 covered obligations created by unilateral acts of States conflicting with a *jus cogens* norm, while draft conclusion 16 covered obligations created by resolutions, decisions or other acts of international organizations conflicting with a *jus cogens* norm. With respect to draft conclusion 16, a key point of discussion had been whether and how decisions of the

Security Council were to be reflected in the draft conclusions. The Commission had decided to include decisions of the Council in the commentary, while noting, inter alia, that it was unlikely that a decision of the Council would be inconsistent with a *jus cogens* norm.

14. Draft conclusion 17 provided that peremptory norms of general international law (*jus cogens*) gave rise to obligations owed to the international community as a whole (obligations erga omnes), in relation to which all States had a legal interest. Draft conclusion 18 stated that no circumstance precluding wrongfulness under the rules on the responsibility of States for internationally wrongful acts might be invoked with regard to any act of a State that was not in conformity with an obligation arising under *jus cogens*. Moreover, draft conclusion 19 addressed the particular consequences of serious breaches of *jus cogens* norms, including that all States should cooperate to bring to an end through lawful means any serious breach by a State of an obligation arising under *jus cogens*, and that no State should recognize as lawful a situation created by a serious breach by a State of an obligation arising under a *jus cogens* norm, nor render aid or assistance in maintaining that situation.

15. Draft conclusion 20 set forth an interpretative rule applicable in the case of potential conflicts between *jus cogens* norms and other rules of international law, whereby the latter were, as far as possible, to be interpreted and applied so as to be consistent with the *jus cogens* norm in question. Draft conclusion 21 set forth a recommended procedure for the invocation of, and the reliance on, the invalidity of rules of international law, including treaties, by reason of being in conflict with norms of *jus cogens*. The Commission had taken into account the many comments made by States regarding that draft conclusion.

16. Draft conclusion 22 established that the draft conclusions were without prejudice to consequences that specific *jus cogens* norms might entail under international law and was aimed at making clear that particular norms of *jus cogens*, such as the prohibition of genocide, might have particular consequences, including with regard to the applicability of immunity. Lastly, draft conclusion 23 referred to the non-exhaustive list, set out in the annex to the draft conclusions, of norms that the Commission had previously referred to as being peremptory norms of general international law (*jus cogens*), without prejudice to the existence or subsequent emergence of other norms of *jus cogens*.

17. *Jus cogens* norms were accorded importance in the conduct of international relations and potentially had far-reaching implications. The draft conclusions were aimed at providing for a process that would lead to the systematic identification of such norms and their legal consequences, in accordance with a generally accepted methodology. The purpose of the draft conclusions was to provide guidance to all those who might be called upon to determine the existence of peremptory norms of general international law (*jus cogens*) and their legal consequences.

18. The Commission had decided, in accordance with article 23 of its statute, to recommend that the General Assembly take note of the draft conclusions, annex them to a resolution and ensure their widest dissemination; and commend the draft conclusions and annex, together with the commentaries thereto, to the attention of States and to all who might be called upon to identify peremptory norms of general international law (*jus cogens*) and to apply their legal consequences.

19. Turning to the topic "Protection of the environment in relation to armed conflicts", which was addressed in chapter V of the report, he said that, in undertaking the second reading of the topic, the Commission had had before it the third report of the Special Rapporteur (A/CN.4/750) and the comments and observations received from Governments, international organizations and others (A/CN.4/749). The topic had first been placed on the programme of work of the Commission in 2013.

20. The draft principles on protection of the environment in relation to armed conflicts were aimed at enhancing the protection of the environment before, during and after an armed conflict, including in situations of occupation. The text adopted on second reading largely resembled the first-reading text, but included some changes. First, the Commission had decided that, in the light of comments made by Governments, international organizations and others, it would be appropriate to add a preamble. The draft principles referred consistently to "the environment", which was in line with the established terminology of international environmental law, rather than to "the natural environment". That should not be understood as altering the scope of the existing conventional and customary law of armed conflict, or as expanding the scope of the notion of "the natural environment" in that area of law. Moreover, draft principle 1 (Scope) had been changed to make clear that the entire set of draft principles applied also in situations of occupation. In addition, draft principle 15 (Environmental considerations), included in the text adopted on first reading, had been deleted following comments made by

Governments, international organizations and others. The relevant parts of the accompanying commentary, as adopted on first reading, had been incorporated into the commentary to draft principle 14. The provisions had been cast as draft "principles" and were of differing normative value, including those that reflected customary international law and those containing recommendations for progressive development.

21. The draft preamble, consisting of seven paragraphs, provided a conceptual framework for the draft principles, setting out the general context in which they had been developed and their purpose. Draft principles 1 (Scope) and 2 (Purpose), comprising Part One, were introductory in nature. Draft principles 3 to 11, comprising Part Two, were principles of general application. Draft principle 3 recognized that States were required to take effective measures to enhance the protection of the environment in relation to armed conflicts. Draft principle 4 provided that States should designate, by agreement or otherwise, areas of environmental importance as protected zones, including where those areas were of cultural importance. Draft principle 5 stated that measures should be taken in times of armed conflict to protect the environment of the lands and territories inhabited or traditionally used by Indigenous Peoples. Draft principle 6 dealt with agreements concluded between States or between States and international organizations concerning the presence of military forces and provided that such agreements should include provisions concerning the protection of the environment, while draft principle 7 concerned peace operations. Draft principle 8 addressed the inadvertent environmental effects of conflict-related human displacement. Draft principles 9, 10 and 11 covered, respectively, the closely related issues of State responsibility, due diligence by business enterprises, and liability of business enterprises.

22. Part Three was comprised of draft principles 12 to 18, which were those applicable during armed conflict, irrespective of classification. That included international armed conflicts, including situations of occupation, armed conflicts in which peoples were fighting against colonial domination, alien occupation and racist regimes in the exercise of their right of self-determination, and non-international armed conflicts. Draft principle 12 was inspired by the Martens Clause, which had originally appeared in the preamble to the 1899 Hague Convention (II) with Respect to the Laws and Customs of War on Land. Draft principle 13 addressed the general protection of the environment during armed conflict. It provided, inter alia, that, subject to international law, the use of methods and means of warfare that were intended, or might be expected, to cause widespread, long-term and severe damage to the environment was prohibited. Draft principle 14 was of a general character and dealt with the application of principles and rules of the law of armed conflict to the environment with a view to its protection. Draft principle 15 was based on article 55, paragraph 2, of Protocol I Additional to the Geneva Conventions of 1949, which stated that "attacks against the natural environment by way of reprisals are prohibited". Draft principle 16 restated the prohibition of pillage under international law. Draft principle 17 addressed environmental modification techniques and was modelled on article 1, paragraph 1, of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of 1976. Draft principle 18 (Protected zones) corresponded to draft principle 4 (Designation of protected zones).

23. Part Four (Principles applicable in situations of occupation) comprised draft principles 19 to 21. Draft principle 19 set out the general environmental obligations of an occupying Power. Draft principle 20 set forth the obligations of an occupying Power with respect to the sustainable use of natural resources, while draft principle 21 established the obligation of the occupying Power to prevent harm to the environment of other States or areas beyond national jurisdiction, or any area of the occupied State beyond the occupied territory.

24. Part Five (Principles applicable after armed conflict) comprised draft principles 22 to 27. Draft principle 22 dealt with peace processes and reflected the fact that environmental considerations should be taken into consideration in the context of peace processes, including through the regulation of environmental matters in peace agreements. Draft principle 23 addressed the obligation to share or grant access to relevant information to facilitate measures to remediate harm to the environment resulting from an armed conflict. Draft principle 24 was aimed at encouraging relevant actors to cooperate in order to ensure that environmental assessments and remedial measures could be carried out in post-conflict situations. Draft principle 25 was aimed at encouraging States to take appropriate measures to repair and compensate environmental damage caused during armed conflict. Draft principles 26 and 27 dealt, respectively, with the issues of remnants of war and remnants of war at sea.

25. The Commission had decided, in accordance with article 23 of its statute, to recommend that the General Assembly take note of the draft principles in a resolution, annex the principles to the resolution and encourage their widest possible dissemination; and commend the draft principles, together with the

commentaries thereto, to the attention of States and international organizations and all who might be called upon to deal with the subject.

26. The topic “Immunity of State officials from foreign criminal jurisdiction”, addressed in chapter VI of the report, had been on the Commission’s programme of work since 2007. The draft articles adopted on first reading, which comprised four parts, provided a general regime for the immunity of State officials from foreign criminal jurisdiction. Part One consisted of the introductory draft articles 1 (Scope of the present draft articles) and 2 (Definitions). Draft article 1 reflected both the inclusionary and the exclusionary elements of the scope of the draft articles: they addressed State officials, and their immunity, in relation to criminal jurisdiction arising in a horizontal relationship between one State and another, and were without prejudice to those regimes already addressed by special rules of international law, some of which had been the subject of prior work by the Commission, including diplomatic immunities and consular immunities. Paragraph 3 of the draft article offered an additional clarification that the draft articles did not affect the rights and obligations of States parties under international agreements establishing international criminal courts and tribunals as between the parties to those agreements.

27. Draft article 2 defined “State official” and an “act performed in an official capacity” for the purposes of the draft articles. There was no general definition in international law of the term “State official”. The Commission had taken the view that the formulation of such a definition for the purposes of the draft articles was advisable and feasible. Combining the “representational” and “functional” approaches, the definition as formulated in the draft article was broad enough to cover the Head of State, the Head of Government and the Minister for Foreign Affairs, and also those individuals (not legal persons) who exercised a range of other State-related functions in a variety of capacities on behalf of the State.

28. The definition of an “act performed in an official capacity” referred to both actions and omissions. The reference to “State functions” in the definition of “State official” was not a term of art. In general, international law did not govern the structure of the State and the functions of its organs. It was up to each State to determine how it structured, internally, its administration and the functioning of its government. As such, “State functions” should be viewed broadly, and what constituted such functions would depend on the circumstances of each case. Both internal law and practice and international law were relevant in determining whether the functions in question appertained to the State or to the exercise of the functions of government.

29. The expression “in the exercise of State authority” in the definition of an “act performed in an official capacity” was intended to reflect a link between the act in question and the State. That connection justified the invocation of immunity, consistent with the principle of the sovereign equality of States. The attribution of an act to the State was a prerequisite for an act to be characterized as having been performed in an official capacity. A single act could engage both the responsibility of the State and the individual responsibility of the author, especially in criminal matters. The Commission had also considered the usefulness of defining such terms as “criminal jurisdiction”, “exercise of criminal jurisdiction”, “immunity from criminal jurisdiction” and “inviolability”, but had concluded that the task of defining those terms would be unnecessary and difficult to accomplish.

30. Part Two concerned the personal and material scope of immunity *ratione personae*, in draft articles 3 and 4, respectively. Draft article 3, which dealt with persons enjoying immunity *ratione personae*, was confined to identifying the persons to whom that status-based immunity applied, namely the Head of State, the Head of Government and the Minister for Foreign Affairs, for whom immunity was justified on representational and functional grounds. After a detailed discussion, the Commission had ultimately decided that high-ranking officials should not enjoy immunity *ratione personae* for the purposes of the draft articles, without prejudice to the rules pertaining to immunity *ratione materiae*, covered in Part Three. Nonetheless, when such officials were on official visits, they often enjoyed immunity from foreign criminal jurisdiction based on the rules of international law relating to special missions.

31. Draft article 4 addressed the material scope of immunity *ratione personae* and the essentially limited temporal scope of that kind of immunity, which subsisted only while the person to whom it related remained in office but was broad enough materially to cover all acts performed, whether in a private or official capacity, and whether performed during or prior to the term of office of the person enjoying such immunity. The cessation of immunity *ratione personae* was without prejudice to the application of the rules of international law concerning immunity *ratione materiae*.

32. Part Three, comprised of draft articles 5 to 7, dealt with conduct-based immunity *ratione materiae*. Draft

article 5 established which persons enjoyed immunity *ratione materiae*. While it was widely acknowledged that State officials enjoyed immunity *ratione materiae* for their official acts or for acts performed in an official capacity, a person must be regarded as a State official in order to enjoy such immunity. As currently formulated, the draft article provided that State officials acting "as such" enjoyed immunity *ratione materiae* from the exercise of foreign criminal jurisdiction, thereby signalling the importance of a link between the official (and his or her acts) and the State.

33. Draft article 6 addressed the "what" and "when" of immunity *ratione materiae*. Immunity *ratione materiae* applied exclusively to acts performed in an official capacity, meaning that acts performed in a private capacity were excluded. The temporal scope of such immunity was extensive, as it continued to subsist even after the individual concerned had ceased to be a State official. Accordingly, an individual who enjoyed immunity *ratione personae* in accordance with draft article 4, and whose term of office had come to an end, continued to enjoy immunity with respect to acts performed in an official capacity during such term of office. Draft article 7, together with the annex to the draft articles, dealt with the question of limitations and exceptions to immunity *ratione materiae*, providing a list of crimes under international law to which such immunity "shall not apply". The draft article was included in Part Three to emphasize that the limitations and exceptions set out therein did not apply to immunity *ratione personae*.

34. Part Four, entitled "Procedural provisions and safeguards", comprised 11 draft articles. It addressed the traditional procedural provisions associated with invocation and waiver of immunity, and also offered additional safeguards that the Commission viewed as useful considering the nature of the topic and its potential impact on international relations. The emphasis on procedural safeguards had grown over the years, given the sensitivity of the subject for States. For the most part, the provisions were presented as an exercise in progressive development.

35. Draft article 8 was general in nature and provided that the procedural provisions and safeguards forming Part Four of the draft articles were applicable in relation to any criminal proceeding against a foreign State official, current or former, that concerned any of the draft articles contained in Part Two and Part Three, including to the determination of whether immunity applied or did not apply under any of the draft articles. Draft articles 9 to 14 addressed the traditional matters concerning procedure, while draft articles 15 to 18 provided for additional safeguards. Draft articles 9 to 13 covered sequentially the various procedural steps that needed to be taken to facilitate an eventual determination of immunity: the examination of immunity by the forum State; notification to the State of the official; invocation of immunity; possible waiver of immunity; and cross-cutting requests for information.

36. Draft article 14 addressed determination of immunity, which was a matter for the competent authorities of the forum State, according to its law and procedures and in conformity with the applicable rules of international law. The draft article set forth the criteria that needed to be taken into account, including, in particular, in cases where the application of draft article 7 might be considered, as set out in paragraph 3. The Commission had also taken the view that it was important to address other procedural safeguards such as the possible transfer of criminal proceedings against a State official to the State of the official, covered in draft article 15, and the guarantee of fair treatment of the State official, covered in draft article 16; and to make provision for consultations between the forum State and the State of the official, as appropriate, covered in draft article 17, and for the peaceful settlement of disputes between the forum State and the State of the official, covered in draft article 18.

37. The Commission had decided, in accordance with articles 16 to 21 of its statute, to transmit the draft articles, through the Secretary-General, to Governments for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 December 2023.

38. Turning to the topic "Succession of States in respect of State responsibility", which was addressed in chapter VII of the report, he said that the Commission had had before it the fifth report of the Special Rapporteur (A/CN.4/751). In his report, the Special Rapporteur, inter alia, examined the question of a plurality of injured successor States and a plurality of responsible successor States and proposed a new scheme for the consolidation and restructuring of the draft articles referred to the Drafting Committee at previous sessions of the Commission on the basis of proposals contained in his reports. The Commission's work on the topic, which had been on its programme of work since 2017, was aimed at clarifying the interaction and filling possible gaps between the law of succession of States and the law of responsibility of States for internationally wrongful acts, while bearing in mind the importance of maintaining consistency with the Commission's previous work on various aspects of those two areas of law, including the Vienna Convention on Succession of States in respect of Treaties, the Vienna Convention on Succession of States in respect of

State Property, Archives and Debts, the articles on nationality of natural persons in relation to the succession of States and the articles on responsibility of States for internationally wrongful acts.

39. Following the debate in plenary, the Commission had decided, on the recommendation of the Special Rapporteur, to instruct the Drafting Committee to proceed with the preparation of draft guidelines on succession of States in respect of State responsibility on the basis of the draft articles previously referred to the Drafting Committee, including those draft articles provisionally adopted by the Commission at previous sessions, taking into account the plenary debate. The Commission had then considered the report of the Drafting Committee and had provisionally adopted draft guidelines 6, 10, 10 bis and 11, which had been provisionally adopted by the Drafting Committee at previous sessions, as well as draft guidelines 7 bis, 12, 13, 13 bis, 14, 15 and 15 bis, which had been provisionally adopted by the Drafting Committee at the seventy-third session.

40. Draft guideline 6 concerned the lack of effect of the succession of States on attribution. Draft guideline 7 bis dealt with composite acts. Draft guidelines 10, 10 bis and 11 concerned, respectively, the uniting of States, the incorporation of a State into another State and the dissolution of a State in cases where a predecessor State was responsible for an internationally wrongful act. Draft guidelines 12, 13, 13 bis and 14 dealt with cases of succession when the predecessor State continued to exist; the uniting of States; the incorporation of a State into another State; and the dissolution of a State, respectively, in cases where an internationally wrongful act was committed against a predecessor State before the date of succession. Draft guidelines 15 and 15 bis related, respectively, to diplomatic protection and to cessation and non-repetition of wrongful acts. While draft guidelines 9 to 11 and 12 to 14 had identical titles, the Special Rapporteur had proposed to divide the draft guidelines into parts whose titles would make the scope of application of the two sets of provisions clear.

41. As a result of the change of form of the outcome, the Commission had also taken note of draft articles 1, 2, 5, 7, 8 and 9, as revised by the Drafting Committee to be, respectively, draft guidelines 1 (Scope), 2 (Use of terms), 5 (Cases of succession of States covered by the present draft guidelines), 7 (Acts having a continuing character), 8 (Attribution of conduct of an insurrectional or other movement) and 9 (Cases of succession of States when the predecessor State continues to exist). The Commission had also taken note that the Special Rapporteur had provided revised commentaries on an informal basis for draft guidelines 1, 2, 5, 7, 8 and 9 to assist it in its future work on the topic. Only one draft guideline proposed by the Special Rapporteur, concerning reparation, remained before the Drafting Committee.

42. The topic “General principles of law”, of which the Commission had commenced substantive consideration in 2019, was addressed in chapter VIII of the report. It concerned general principles of law as a source of international law, in the sense of Article 38, paragraph 1, of the Statute of the International Court of Justice. The Commission had had before it the third report of the Special Rapporteur (A/CN.4/753), which covered the transposition of principles common to the various legal systems of the world to the international legal system, the identification of general principles of law formed within the international legal system, and the functions of general principles of law and their relationship with other sources of international law. In the report, the Special Rapporteur proposed five new draft conclusions on general principles of law (draft conclusions 10 to 14). After the debate in plenary, the Commission had decided to refer the five draft conclusions to the Drafting Committee. The Drafting Committee had been able to conclude the substantive consideration of the draft conclusions referred to it by the plenary at the seventy-third and previous sessions and had undertaken a final review of the entire set of draft conclusions to ensure their coherence. The Commission had considered the report of the Drafting Committee containing the consolidated text of draft conclusions 1 to 11, provisionally adopted by the Drafting Committee.

43. The Commission had provisionally adopted draft conclusions 3, 5 and 7, together with the commentaries thereto. Those three draft conclusions addressed, respectively, categories of general principles of law, the determination of the existence of a principle common to the various legal systems of the world and the identification of general principles of law formed within the international legal system. The Commission had also taken note of draft conclusions 6 (Determination of transposition to the international legal system), 8 (Decisions of courts and tribunals), 9 (Teachings), 10 (Functions of general principles of law) and 11 (Relationship between general principles of law and treaties and customary international law), as provisionally adopted by the Drafting Committee.

44. He recalled that, in 2019, the Commission had sought information from States on their practice relating to general principles of law, in the sense of Article 38, paragraph 1 (c), of the Statute of the International Court of Justice. As reflected in chapter III of its report, the Commission still considered that request relevant and

would welcome such information and any additional information.

45. Chapter IX of the report concerned the topic "Sea-level rise in relation to international law", which had been on the Commission's programme of work since 2019. The Commission had reconstituted the Study Group on the topic, which in 2022 had focused on the subtopics of statehood and the protection of persons affected by sea-level rise, on the basis of the second issues paper (A/CN.4/752 and A/CN.4/752/Add.1). Following the presentation of the second issues paper by the authors, members of the Study Group had made general comments on the topic and the paper, as well as on the scope of work of the Study Group, including working methods, scientific findings, State practice and sources of law. With regard to the subtopic of statehood, the Study Group had reflected on the criteria set out in the Convention on Rights and Duties of States and had considered the potential need to take into account the interests and needs of affected populations, including through the lens of self-determination. The Study Group had examined the relevance of the presumption of continuity of statehood and had explored other possible alternatives for the future concerning statehood. It had also considered the potential solution that lay in preserving part of a disappearing State, including through reclamation efforts, as well as whether or not compensation for the damage caused by sea-level rise should be addressed in the Commission's work on the topic. On the subtopic of the protection of persons affected by sea-level rise, the Study Group had examined the potential applicability of existing legal frameworks and human rights law.

46. For each subtopic, Study Group members had discussed the guiding questions prepared by the Co-Chairs and had commented on the future work of the Study Group. In their concluding remarks, the Co-Chairs had underlined, inter alia, that some additional information was required on the practice of States and international organizations, especially in Africa, Asia and Latin America and the Caribbean. The Co-Chairs had also noted that they would organize informal meetings with scientists from the Intergovernmental Panel on Climate Change on specific issues of interest and had made a number of proposals regarding the continuation of the work of the Study Group. With regard to its future work, the Study Group would revert to the subtopic of the law of the sea in 2023 and to the subtopics of statehood and the protection of persons affected by sea-level rise in 2024. In 2025, the Study Group would seek to finalize a substantive report on the topic as a whole. Governments were encouraged to respond to the questions in chapter III of the Commission's report and provide the information requested in relation to the subtopic of sea-level rise in relation to the law of the sea by 1 December 2022 and the subtopics of sea-level rise in relation to statehood and the protection of persons affected by sea-level rise by 30 June 2023.

47. **Mr. Gussetti** (Representative of the European Union, in its capacity as observer), referring to the topic "Protection of the environment in relation to armed conflict", said that the European Union welcomed the adoption of the draft principles on protection of the environment in relation to armed conflicts, together with the preamble and the commentaries thereto, and acknowledged the need to enhance the protection of the environment in cases of armed conflicts that might have serious global consequences, such as climate change and biodiversity loss. The protection of the environment should be taken into consideration in the implementation of the international law applicable in cases of armed conflict, in line with the formal recognition by the General Assembly, in its resolution 76/300, of the human right to a clean, healthy and sustainable environment.

48. The European Union strongly supported the application of the draft principles before, during and after an armed conflict and welcomed the fact that they were addressed not only to States but also to international organizations and other actors involved in the protection of the environment. It also welcomed the fact that the reference to international law in draft principle 3 (Measures to enhance the protection of the environment) included all relevant treaty-based and customary law obligations related to the protection of the environment, whether derived from international environmental law, human rights law or other areas of law. It attached particular importance to paragraph (10) of the commentary to the draft principle, which referred to the obligation under international law to investigate war crimes that concerned the environment and, if appropriate, to prosecute the suspects.

49. In accordance with draft principle 4, States should designate, by agreement or otherwise, areas of environmental importance as protected zones in the event of an armed conflict. In his delegation's view, the designation of such protected zones should be based on objective and clearly defined criteria relating to, for example, biodiversity, cultural importance or any special status of a zone under international or national law. His delegation welcomed draft principle 5, which provided for the protection of lands and territories that Indigenous communities inhabited. It also welcomed the fact that draft principle 9 reaffirmed the international responsibility of a State that caused damage to the

environment through an internationally wrongful act and noted with satisfaction that, in the commentary to that draft principle, the Commission recalled that environmental damage caused in armed conflict was recognized as compensable under international law.

50. Under draft principles 13 (General protection of the environment during armed conflict) and 18 (Protected zones), the protection afforded by international law did not apply if the protected area became or contained a military objective. In that regard, the general obligation to avoid establishing military objectives in environmentally protected areas could have been considered. Draft principle 19, which set out the general environmental obligations of an occupying Power, referred to measures to prevent harm to the environment that was likely to prejudice the health and well-being of protected persons of the occupied territory. In that regard, the European Union called for the most extensive protection, which should apply to all civilians within the protected territory. Protection should also be afforded to water bodies and systems, treatment and sewage systems, and other natural and human-made infrastructure using environmental services, as well as toxic, hazardous and other civilian objects endangering the environment, such as chemical plants and waste treatment facilities.

51. **Ms. Bierling** (Norway), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the Commission's achievements during its seventy-third session were commendable, in particular because the session had been held in a hybrid format owing to restrictions related to the COVID-19 pandemic. The Commission, in its discussions on its working methods, would no doubt benefit from its experience in that regard.

52. With regard to chapters I, II, III and X of the Commission's report, the Nordic countries welcomed the progress made by the Commission, in particular its adoption on first reading of 18 draft articles and a draft annex on immunity of State officials from foreign criminal jurisdiction, together with commentaries thereto. The Nordic countries noted the proposed terms of reference for a trust fund to support the work of Special Rapporteurs. They were also aware of the Commission's concerns about the effect of budgetary constraints on its work. They agreed that it was essential for all members of the Commission to be able to attend its meetings and for all Special Rapporteurs to have the research assistance required for the preparation of their reports. Attendance at the Commission's sessions by the necessary Secretariat teams was equally important. Although adequate resources to enable the Commission to fulfil its mandate should be provided from the regular budget of the United Nations, the Nordic countries were open to considering the establishment of a trust fund to provide additional support.

53. The Nordic countries welcomed the inclusion in the Commission's current programme of work of the topics "Settlement of international disputes to which international organizations are parties"; "Prevention and repression of piracy and armed robbery at sea"; and "Subsidiary means for the determination of rules of international law", which would be an important addition to the Commission's work on the sources of international law. They also welcomed the inclusion of the topic "Non-legally binding international agreements" in the Commission's long-term programme of work and considered the proposed scope of the topic to be realistic.

54. With regard to the topic "Peremptory norms of general international law (*jus cogens*)", the Nordic countries congratulated the Commission for adopting the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) and the commentaries thereto. The Commission had completed its work on the topic against the backdrop of the Russian invasion of Ukraine. The General Assembly, in its resolution ES-11/1, deplored in the strongest terms the aggression by the Russian Federation against Ukraine, which was in violation of Article 2 (4) of the Charter of the United Nations. That serious breach of a peremptory norm only emphasized the significance of the body of law that had been systematized by the Commission in the draft conclusions and commentaries.

55. The Nordic countries maintained their view that the topic was best dealt with through a conceptual and analytical approach, rather than with a view to elaborating a new normative framework for States. Considering the relatively limited and varying State practice on the topic, codification might not be the most prudent way forward. Interpretations of the consequences and effects of *jus cogens* norms must be based on the positions of States and not those of other actors. While many of the Nordic countries' comments and observations on the draft conclusions had not resulted in changes to the text adopted on second reading, the countries were pleased that draft conclusion 3 (General nature of peremptory norms of general international law (*jus cogens*)), as adopted by the Commission on first reading and which had been adopted on second reading as draft conclusion 2 (Nature of peremptory norms of general international law (*jus cogens*)), had been moved in order to avoid the perception that it formed part of the criteria for the identification of a peremptory norm.

56. The actors relevant in identifying peremptory norms of general international law needed to be clearly defined. In particular, the definition of the term "other actors" in paragraph 3 of draft conclusion 7 (International community of States as a whole) should be clarified. The Commission rightly stated in the commentary to the draft conclusion that it was the position of States and not that of other actors that was relevant. Similarly, with regard to the works of expert bodies, which were identified in draft conclusion 9, paragraph 2, as subsidiary means for the determination of the peremptory character of norms of general international law, the Nordic countries continued to hold the view that the question of the role of such bodies should be approached with caution.

57. The Nordic countries also maintained their reservations with regard to the non-exhaustive list of *jus cogens* norms mentioned in draft conclusion 23 and annexed to the draft conclusions. Although the list was without prejudice to the existence or subsequent emergence of other peremptory norms, the Nordic countries considered it important to emphasize that the list must not be interpreted as preventing the emergence of State practice and *opinio juris* in support of other norms.

58. On the other hand, the Nordic countries were favourably disposed towards many of the modifications that had been made to the draft conclusions, including the replacement of the phrase "a very large majority of States" with the phrase "a very large and representative majority of States" in draft conclusion 7, paragraph 2. The reformulation of paragraph 1 of draft conclusion 14 (Rules of customary international law conflicting with a peremptory norm of general international law (*jus cogens*)) was also sound.

59. Draft conclusion 19, which set out the consequences of serious breaches of peremptory norms, was particularly significant. The Nordic countries agreed with the Commission that the obligation of States to cooperate by lawful means to end such breaches was a part of general international law. They also agreed that the emphasis in paragraph 1 of the draft conclusion was on collective measures and considered that the negative obligations set out in paragraph 2 were equally important and well settled in general international law.

60. The Nordic countries welcomed the statement in the commentary to draft conclusion 16 (Obligations created by resolutions, decisions or other acts of international organizations conflicting with a peremptory norm of general international law (*jus cogens*)) that the draft conclusion should not be read as providing cover for unilateral repudiation of obligations flowing from binding resolutions of the United Nations. However, they were concerned about the possible ramifications of the draft conclusion for the institutional set-up laid down in the Charter of the United Nations, including the balance between the Security Council and the International Court of Justice. In that regard, the changes made to draft conclusion 21 (Recommended procedure) in order to stress the recommendatory character of the dispute resolution procedure were very important.

61. On the topic "Protection of the environment in relation to armed conflicts", the Nordic countries noted that armed conflicts inflicted a multitude of harms on the environment, both direct and indirect, immediate and long-term. Ongoing armed conflicts, such as the Russian war of aggression in Ukraine, had brought to light the devastation such conflicts inflicted on the environment, through, for example, strikes on chemical plants, refineries and pipelines, and military action conducted in the vicinity of nuclear power plants.

62. The Nordic countries therefore welcomed the draft principles on protection of the environment in relation to armed conflicts and the commentaries thereto adopted by the Commission on second reading, which were as timely as they were important. Given their all-encompassing nature and the fact that they had been developed in close consultation with States and relevant international and expert organizations, they would become an instrument of legal reference in the protection of the environment in relation to armed conflicts. The aim of the draft principles was clearly outlined in the preamble, which provided a conceptual framework and set out the context in which they had been developed and their main purposes. The preamble underlined the urgency of the protection of the environment for present and future generations and recognized that the environmental consequences of armed conflicts might be severe and far-reaching, potentially exacerbating global environmental challenges, such as climate change and biodiversity loss. Moreover, the preamble recognized the relationship between the environment, on the one hand, and livelihoods, food and water security, maintenance of traditions and cultures, and the enjoyment of human rights, on the other.

63. The Nordic countries agreed with the material scope of the draft principles in that they covered both international and non-international armed conflicts. Importantly, different draft principles were addressed to States, international organizations and other relevant actors. The draft principles drew not only on international humanitarian law but also on international human rights law and international environmental law.

Those areas of law were obviously relevant in pre- and post-conflict phases and remained relevant during an armed conflict. Moreover, in addition to clarifying and systematizing existing international law, the draft principles contained many commendable recommendations for the purpose of the progressive development of international law.

64. The Nordic countries were pleased that the protection of the environment of Indigenous Peoples was addressed in a dedicated draft principle and wished to emphasize the participatory rights of Indigenous Peoples relating to their lands, territories and resources. That meant that consultations should be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent, before adopting measures that might affect Indigenous Peoples directly. The Nordic countries also welcomed the focus on peace operations in draft principle 7, which was aimed at ensuring that those involved in such operations would undertake their activities, from the planning phase through the operational part, to the post-operation phase, in such a manner that the impact of their activities on the environment was minimized. The Nordic countries agreed with the scope of the draft principle, which covered broadly all peace operations that were established in relation to armed conflict.

65. Remnants of war at sea posed significant legal challenges owing to the multifaceted nature of the law of the sea. As outlined in the commentary to draft principle 27, a particular State could have sovereignty, jurisdiction, both sovereignty and jurisdiction, or neither sovereignty nor jurisdiction, depending on where the remnants were located. Accordingly, the draft principle addressed States generally, not only those that had been involved in an armed conflict, and explicitly encouraged international cooperation to ensure that remnants of war at sea did not constitute a danger to the environment. As stated on previous occasions, the Nordic countries agreed with the Commission's approach, which left room for the development of law without undermining existing international legal obligations.

66. The Commission's timely completion of its work on the topic was a major step forward in the systematization of the law relating to the protection of the environment in relation to armed conflicts. In addition, the draft principles complemented the important work of the International Committee of the Red Cross in that area, including its updated *Guidelines on the Protection of the Natural Environment in Armed Conflict*. The work of the United Nations Environment Programme on disasters and conflicts was also noteworthy.

67. **Ms. Hong** (Singapore) said, with regard to the topic "Peremptory norms of general international law (*jus cogens*)", that her delegation appreciated the Commission's efforts to engage with Member States but remained of the view that the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) could be further improved or clarified in the manner proposed in its written comments.

68. On draft conclusion 7 (International community of States as a whole), her delegation appreciated the fact that, in the light of its comments, the requirement of acceptance and recognition of the peremptory status of a norm by "a very large majority of States" had been changed to acceptance and recognition by "a very large and representative majority of States". That said, it continued to believe that the phrase "as a whole" in reference to the international community of States had quantitative as well as qualitative elements, and that the phrase "virtually all States" would convey the requisite quantitative meaning.

69. Her delegation noted the amendments to draft conclusion 21 (Recommended procedure) and the commentary thereto, in particular the fact that paragraph 3 of the draft conclusion now envisaged the possibility of recourse to the International Court of Justice or to some other procedure entailing binding decisions if no solution was reached on a State's objection to another State invoking a peremptory norm of general international law within a period of 12 months. However, it remained of the view that the draft conclusion was unnecessary and was not appropriately placed in a set of draft conclusions dealing with the methodology for the identification and legal consequences of peremptory norms of general international law.

70. With regard to the non-exhaustive list of *jus cogens* norms set out in draft conclusion 23, her delegation was grateful for the Commission's efforts to find a compromise solution, but had two concerns: first, that users might take the list to be definitive; and, second, that the list had not been compiled using the methodology that the Commission itself had developed for the identification of *jus cogens* norms in the draft conclusions. The numerous written submissions made by others on the topic contained many valuable ideas, but also demonstrated that there remained divergences in views. Her delegation therefore looked forward to hearing the views of other delegations in the course of the Committee's debate.

71. With regard to the topic “Protection of the environment in relation to armed conflicts”, her delegation welcomed the adoption of the draft principles on protection of the environment in relation to armed conflicts, which represented the outcome of an extensive study on an important subject that cut across many issues.

72. Concerning “Other decisions and conclusions of the Commission”, Singapore noted with interest the re-establishment of the Working Group on methods of work of the Commission and looked forward to updates on the Commission’s deliberations and to close collaboration between the Commission and the Committee on the important issue of methods of work.

73. Her delegation supported the inclusion of the topic “Non-legally binding international agreements” in the long-term programme of work. The prevalent use of non-legally binding memorandums of understanding or agreements by States illustrated the topic’s practical significance. If the topic was moved to the Commission’s current programme of work, her delegation hoped that the Commission would take into account the rich practice of the States members of the Association of Southeast Asian Nations on the issue.

74. **Mr. Al-edwan** (Jordan), referring to the topic “Peremptory norms of general international law (*jus cogens*)”, said that his delegation welcomed the adoption on second reading of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*). It was pleased that the Special Rapporteur had maintained a cautious approach in his fifth report (A/CN.4/747) and that the draft conclusions for the most part reflected existing State practice, while also containing some elements of *lex ferenda*. In the commentaries, the Commission to a large extent captured the distinction between the *lex lata* and the *lex ferenda* elements in the draft conclusions. His delegation remained of the view that the draft conclusions should be used to identify *jus cogens* norms and their legal consequences, and not to advance policy considerations.

75. Draft conclusion 2 (Nature of peremptory norms of general international law (*jus cogens*)) did not set criteria for the identification of peremptory norms, but was mainly descriptive of their nature. The most important point was that *jus cogens* norms protected the fundamental values of the international community as a whole, which was a wider concept than the fundamental values of the international community of States as a whole. On draft conclusion 5 (Bases for peremptory norms of general international law (*jus cogens*)), his delegation remained of the view that the relevant practice indicated that only customary international law formed a basis for *jus cogens* norms. It therefore agreed with the statement in the draft conclusion that customary international law was the most common basis for such norms, in comparison with treaty provisions and general principles of law. On draft conclusion 7 (International community of States as a whole), his delegation supported the proposition that acceptance and recognition by the international community of States as a whole did not necessarily mean unanimity but rather acceptance and recognition by a large majority of States without qualification. As stated in the commentary to the draft conclusion, such majority must also be representative, reflecting the positions of States across regions and legal traditions.

76. His delegation welcomed the affirmation in draft conclusion 16 (Obligations created by resolutions, decisions or other acts of international organizations conflicting with a peremptory norm of general international law (*jus cogens*)) that *jus cogens* norms were superior to binding resolutions and decisions of international organizations. However, that should not be used by States as a pretext to avoid complying with their obligations under such decisions or resolutions that were otherwise binding. The procedure recommended in draft conclusion 21 was impractical and raised a number of questions, including who the “other States concerned” were, especially in relation to a customary rule or a general principle of law, and which entity would give notification of the grounds for invalidity and the objection. Jordan supported the non-exhaustive list, contained in the annex to the draft conclusions, of norms that the Commission had previously referred to as having peremptory status. The list was an important reference point for avoiding abuses in identifying other *jus cogens* rules and for applying the criteria for such identification.

77. With regard to the topic “Protection of the environment in relation to armed conflicts”, his delegation welcomed the fact that the draft principles on protection of the environment in relation to armed conflicts covered three temporal phases – before, during and after an armed conflict – while taking into account the fact that certain principles applied mutatis mutandis to all three phases.

78. During a conflict, the rules of international humanitarian law were *lex specialis*. However, as the International Court of Justice had stated, other rules, such as those of international human rights and environmental law, also applied to the extent that they did not conflict with the rules of international humanitarian law. The draft principles did not purport to amend existing rules that applied to environmental

protection in relation to armed conflict. Given that most modern armed conflicts were non-international in nature, the applicability of the draft principles to such conflicts was crucial for environmental protection. The challenge was to induce non-State armed groups to respect such obligations in the event of a conflict and to hold them responsible for any breaches thereof.

79. With regard to Part Four (Principles applicable in situations of occupation), it was well established under international law that situations of foreign occupation were a form of international armed conflict. As reflected in the commentary, the inclusion of that Part did not change the nature of situations of occupation as international armed conflicts; it was an important step towards strengthening environmental protection during occupation.

80. On draft principle 3 (Measures to enhance the protection of the environment), his delegation supported the proposition that States were required only to take effective measures pursuant to their international obligations, and not measures that went beyond such obligations. If the draft principles proposed as *lex ferenda* were to become *lex lata*, they would become part of the obligations pursuant to which States must take the measures in question. His delegation welcomed draft principle 8 (Human displacement), in accordance with which States, international organizations and other relevant actors should take appropriate measures regarding the environment in areas where persons displaced by armed conflict were located. Human displacement as a result of conflict had a major environmental impact. His delegation considered it unnecessary to include a draft principle on State responsibility, including "without prejudice" clauses on the responsibility of other actors. Instead, the Commission should have tackled the complex problem of attribution of environmental damage in the event of armed conflict. With regard to draft principle 16 (Prohibition of pillage), his delegation reiterated its view that the prohibition applied not only to acts by the occupying authority, but also to private acts.

81. On Part Four, his delegation welcomed the use of the terms "protected persons" and "protected population", which were terms of art in international humanitarian law. Although they were interchangeable, it seemed more appropriate to use the first in draft principle 19 (General environmental obligations of an Occupying Power) and the second in draft principle 20 (Sustainable use of natural resources). Even the term "population of the occupied territory" excluded the population of the occupying Power that was transferred to the occupied territory. Draft principle 20 reflected existing rules on the sustainable use of natural resources in an occupied territory. There was no conflict with article 55 of the Hague Regulations. The use of such natural resources by the occupying Power must be for the benefit of the protected population and for other lawful purposes.

82. **Mr. McCarthy** (Australia), referring to "Other decisions and conclusions of the Commission", said that his delegation welcomed the Commission's study of the sources of law identified in Article 38, paragraph 1, of the Statute of the International Court of Justice, given their centrality in the international legal system. It therefore appreciated the Commission's decision to include in its programme of work the topic of subsidiary means for the determination of the rules of international law, under which the subsidiary means listed in Article 38, paragraph 1 (d), namely judicial decisions and the teachings of the most highly qualified publicists, would be studied. The Commission would thereby finalize its systematic consideration of Article 38, paragraph 1, which would help to provide clarity on the nature, scope and functions of subsidiary means as sources of international law and complement the Commission's outputs on other topics that referred to the use of subsidiary means, including the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*).

83. Australia also welcomed the Commission's decision to include the topic "Prevention and repression of piracy and armed robbery at sea" in its programme of work. The United Nations Convention on the Law of the Sea set out the applicable legal framework. The Commission's consideration of State practice in that area and its clarification of any areas of uncertainty would support ongoing international cooperation, which was crucial in order to combat the threats of piracy and armed robbery at sea. Australia welcomed the addition of the topic "Settlement of international disputes to which international organizations are parties" to the Commission's programme of work and would appreciate receiving further information on the topic.

84. With regard to the topic "Peremptory norms of general international law (*jus cogens*)", his delegation acknowledged the importance of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) in providing clarity and guidance. The draft conclusions and the commentaries thereto must accurately reflect international law, be grounded in the practice of States, and be practical. In that connection, Australia emphasized the importance of the information submitted by States on the topic in 2021.

85. His delegation reiterated its previous observations on the topic, in particular its request that further evidence of State practice be included in the commentary to draft conclusion 5 (Bases for peremptory norms of general international law (*jus cogens*)) to demonstrate the possibility that treaty provisions and general principles of law could form the basis of *jus cogens* norms. In addition, the standard for the identification of *jus cogens* norms in draft conclusion 7 (International community of States as a whole) should be acceptance and recognition by the international community of States as a whole. Australia remained doubtful as to the utility of the non-exhaustive list referred to in draft conclusion 23. It would have preferred the Commission to have addressed in the commentaries a limited number of established *jus cogens* norms using the methodological approach established in the draft conclusions.

86. With regard to the topic "Protection of the environment in relation to armed conflicts", his delegation reaffirmed its support for the call for States, pursuant to their obligations under international law, to take effective measures to enhance the protection of the environment in relation to armed conflicts and welcomed the guidance by the Commission on additional measures that States could take to further that objective. Respect for existing international humanitarian law could limit the impact of armed conflict on the natural environment and the populations that depended on it. His delegation encouraged all States to promote respect for the rules of international humanitarian law on protection of the natural environment, including by disseminating them and incorporating them into military manuals, national policy and legal frameworks. With regard to the draft principles on protection of the environment in relation to armed conflicts adopted by the Commission on second reading, Australia welcomed the references to "applicable international law", which highlighted that the draft principles did not suggest new or amended interpretations of existing international humanitarian law.

87. There were substantive differences under international humanitarian law between obligations relating to international conflicts and those relating to non-international conflicts. The draft principles did not currently make that distinction.

88. Although gender balance continued to evade the Commission, his delegation was pleased that the new membership would include a larger number of women than before and encouraged the Commission to improve the gender balance in the Bureau and the Drafting Committee and among the Special Rapporteurs and other office holders.

89. **Ms. Stavridi** (Greece) said, with regard to the topic "Peremptory norms of general international law (*jus cogens*)", that her delegation welcomed the adoption on second reading of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), together with the annex and commentaries thereto. It welcomed in particular the observations in paragraph (13) of the commentary to draft conclusion 2 (Nature of peremptory norms of general international law (*jus cogens*)) that the persistent objector rule did not apply to peremptory norms and that such norms did not apply on a regional or bilateral basis. Both observations were well-founded and stemmed from the universal applicability of *jus cogens* norms. Her delegation also appreciated that, pursuant to the draft conclusion, *jus cogens* norms reflected and protected fundamental values of the international community. However, that cardinal characteristic of *jus cogens* norms also provided a criterion for their identification, given that, for a norm to qualify as peremptory, it should be accepted and recognized by the international community of States as reflecting and protecting such values. States, as well as courts and tribunals, often referred to such acceptance and recognition when asserting that a norm was part of *jus cogens*. Affirmative wording in that respect should therefore have been incorporated into paragraph (19) of the commentary to the draft conclusion. Her delegation shared the Commission's view, set out in that paragraph, that the characteristics contained in the draft conclusion might provide context in the assessment of evidence for the identification of peremptory norms. However, the finding that the characteristics contained in the draft conclusion were not criteria for the identification of peremptory norms was questionable in relation to the characteristic of *jus cogens* as reflecting and protecting fundamental values of the international community.

90. With regard to draft conclusion 21, which set out the recommended procedure in cases in which a State invoked a peremptory norm as a ground for the invalidity or termination of a rule of international law, her delegation was pleased that the wording had been amended to make clear that the procedure was not binding on States. However, pursuant to paragraph (5) of the commentary to draft conclusion 16 (Obligations created by resolutions, decisions or other acts of international organizations conflicting with a peremptory norm of general international law (*jus cogens*)), the procedure set out in draft conclusion 21 might also be used to contest the legal effect of a

resolution, decision or other act of an international organization. Apart from the fact that such acts often did not qualify as rules of international law in the sense of draft conclusion 21, the procedure might not always work in relation to acts of international organizations.

91. Her delegation welcomed the inclusion of an annex containing a non-exhaustive list of norms that the Commission had previously referred to as having the status of *jus cogens*. The prohibition of aggression, the first item in the list, was a cardinal norm of modern international law and was linked with the prohibition, in the Charter of the United Nations, of the use of force, a rule which had also been identified by the Commission, in its commentary to draft article 50 of the 1966 draft articles on the law of treaties, as having the character of *jus cogens*.

92. Turning to the topic "Protection of the environment in relation to armed conflicts", she said that her delegation welcomed the adoption on second reading of the draft principles on protection of the environment in relation to armed conflicts and the commentaries thereto. It welcomed draft principles 4 (Designation of protected zones) and 18 (Protected zones) and was pleased that the scope of draft principle 4 included not only protected zones established by agreement but also protected zones established "otherwise", a term which included zones designated by an international organization or a relevant treaty body.

93. Her delegation appreciated that, pursuant to paragraph 1 of draft principle 13 (General protection of the environment during armed conflict), "the environment shall be respected and protected in accordance with applicable international law and, in particular, the law of armed conflict". However, paragraph (4) of the commentary to the draft principle contained only a brief reference to rules of international law, other than those specific to armed conflict, that remained relevant during armed conflict; guidance was also needed on how and to what extent such other rules, in particular the general principles of environmental law, interacted with *jus in bello* rules. With regard to draft principle 16 (Prohibition of pillage), her delegation welcomed the clarification in paragraph (8) of the commentary to the draft principle that the prohibition of pillage applied also in situations of occupation.

94. With regard to draft principle 20, on the sustainable use of natural resources in an occupied territory to the extent that an occupying Power was permitted to use such resources, the Commission should have clarified in the commentary that, in cases of illegal occupation, third States should abstain from any transaction involving such natural resources that might entrench the occupation. With regard to draft principle 25, concerning relief and assistance in cases where the source of environmental damage was unidentified or reparation was unavailable, her delegation was pleased to note the clarification in paragraph (1) of the commentary to the draft principle that the responsible State was not relieved of the obligation to make reparation.

95. With regard to draft principle 27 (Remnants of war at sea), her delegation acknowledged the references to the United Nations Convention on the Law of the Sea in the footnotes to the commentary to the draft principle. However, given that such remnants might include leaking wrecks or warships, jurisdiction over and removal of which were regulated, inter alia, by the Convention, it would have been preferable to include a reference to the Convention in the text of the draft principle itself.

96. **Mr. Talebizadeh Sardari** (Islamic Republic of Iran) said that his delegation wished to request the Commission to shed light on whether its products, including draft conclusions and guidelines, were of a prescriptive or descriptive nature, to define their scope and, more generally, to determine their status in international law. With regard to the topic "Peremptory norms of general international law (*jus cogens*)", the Commission should also explain the meaning and scope of the new concept of "codification by interpretation" referred to by the Special Rapporteur in his fifth report (A/CN.4/747). His delegation supported the Commission's general approach to identifying peremptory norms of general international law. The draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) should be regarded as progressive development of international law, since they reflected the practice of the international community of States as a whole and the jurisprudence of the International Court of Justice. However, his delegation had a number of concerns relating to the text.

97. Draft conclusion 5 (Bases for peremptory norms of general international law (*jus cogens*)) specified that customary international law was the most common basis for norms of a peremptory character. However, the International Court of Justice, in identifying the peremptory character of the prohibition of torture in *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, had enumerated several sources, such as international instruments of universal application, a General Assembly resolution and the domestic law of almost all States. His delegation was of the opinion that none of the sources referred to in the Court's judgment should take precedence over others;

rather, all sources should be considered collectively and generally in identifying norms of a peremptory character.

98. His delegation agreed with the approach set out in draft conclusion 6 (Acceptance and recognition) that, to identify a norm as a peremptory norm, there must be evidence to indicate that it was accepted and recognized by the international community of States as a whole as a peremptory norm. However, concerning the forms of evidence of acceptance and recognition referred to in draft conclusion 8, his delegation was of the view that public statements made on behalf of States must have been delivered by State organs or agents in their official capacity. The reference in the Commission's report to the work of international organizations or expert bodies seemed to be at variance with the Commission's conclusions on identification of customary international law, in which such entities were not mentioned. The Commission should adopt an integrated approach to topics under consideration and topics on which work had been completed. Moreover, the resolutions or other outputs of such entities could not per se be regarded as evidence of acceptance and recognition or even as a subsidiary means for the determination of the peremptory character of norms, unless such resolutions or outputs were authoritative or reflected a general consensus.

99. With regard to draft conclusion 14 (Rules of customary international law conflicting with a peremptory norm of general international law (*jus cogens*)), paragraph 3 stated that the persistent objector rule did not apply to peremptory norms, meaning that acceptance and recognition by all States was required, which was contrary to the standard referred to in draft conclusion 7, namely "acceptance and recognition by the international community of States as a whole". Given that persistent objection was relevant in the process of formation of rules of customary law, it could also be relevant in the process of identifying peremptory norms, particularly given that custom was regarded as the most common basis for peremptory norms. In other words, the standard for establishing *jus cogens* could be no less than what was required to establish customary international law.

100. On draft conclusion 15 (Obligations created by unilateral acts of States conflicting with a peremptory norm of general international law (*jus cogens*)), according to the Commission's Guide to Practice on Reservations to Treaties, a reservation was a unilateral statement made by a State or an international organization, however phrased or named, or even a unilateral statement formulated jointly by a group of States or international organizations. It should be recalled that, pursuant to principle 8 of the Commission's Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, a unilateral declaration which was in conflict with a peremptory norm of general international law was void. That being the case, and also bearing in mind principle 9 of the Guiding Principles, his delegation was of the view that no obligation could result for other States from the unilateral declarations of one or several States.

101. Concerning draft conclusion 23, his delegation was unconvinced of the need for a non-exhaustive list of norms having peremptory character, the inclusion of which might substantially change the process-oriented nature of the topic. Furthermore, identifying some of the norms in the list as *jus cogens* norms might be controversial at the current stage; they merited in-depth study as future topics by the Commission. For instance, in *East Timor (Portugal v. Australia)*, the International Court of Justice had found the principle of self-determination to be of an *erga omnes* character rather than a *jus cogens* character. Similarly, in its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the Court had referred only to "fundamental rules" of international humanitarian law, not all rules of international humanitarian law, as intransgressible principles of international customary law.

102. Turning to the topic "Protection of the environment in relation to armed conflicts", he said that, as far as the law of armed conflict was concerned, both customary rules and the provisions of treaty law prohibited belligerent parties, directly or indirectly, from causing unnecessary damage to the environment. Moreover, customary international law clearly included specific rules pertaining to protection of the environment. The draft principles on protection of the environment in relation to armed conflicts should reflect either written rules of international law or international custom. In cases in which they reflected recommendations aimed at the progressive development of international law, they did not and could not give rise to new obligations for States.

103. His delegation took note that the draft principles would apply to both international and non-international armed conflicts without any distinction. However, given the dichotomy introduced in the Geneva Conventions between international and non-international armed conflicts, it did not seem possible to apply the rules of international armed conflicts to non-international armed conflicts, since the scope and type of a Government's obligations towards the environment in armed conflicts were different from those of non-State actors. A non-State actor could not be bound to provide

compensation for damage to the environment. That should not, however, be regarded as giving States or other actors licence not to comply with the rules of international humanitarian law.

104. With regard to the role of international organizations in protecting the environment during armed conflicts, the Islamic Republic of Iran attached great importance to the work of the International Committee of the Red Cross. However, that organization's unique role, based on the functions set out in the Geneva Conventions, could not be regarded as a basis for the activities of other non-governmental organizations. International organizations that deployed forces for peacekeeping operations must give due regard to protecting the environment, in line with any relevant obligations that they might have under international law. If they caused considerable damage to the environment, they were deemed responsible under the articles on the responsibility of international organizations. In addition, a threshold should be established for widespread, long-term and severe damage to the environment, as referred to in draft principle 13 (General protection of the environment during armed conflict). Otherwise, not only could the provision not be regarded as progressive development of international law, but it would also be a mere repetition of what had been asserted in previous documents codified by States.

105. Regarding "Other decisions and conclusions of the Commission", his delegation took note of the topics proposed for the Commission's programme of work. Its previously stated views on the topic "Prevention and repression of piracy and armed robbery at sea" were unchanged.

106. His delegation's full statement had been submitted to the Secretariat and would be made available online.

107. **Mr. Muhammad Bande** (Nigeria), speaking on behalf of the African Group, said that the Group was pleased to note the election of the first African female member of the Commission. Noting the steps taken by the Commission to take into account a diversity of legal traditions and geographic and linguistic considerations in the work of its seventy-third session, the Group reiterated its view that the process of progressive development and codification of international law must be all-embracing by including the consideration of legal texts, State practice, precedents and doctrine, as required by the Commission's statute. The Commission should also develop cooperative relationships with regional international law commissions, such as the African Union Commission on International Law, and draw inspiration from the principal legal systems of the world, including African customary law. The Group was committed to multilateralism and the rules-based international legal system and valued the Commission's contribution in that regard, taking into account the views of all Member States.

108. On the issue of equitable geographical representation in the work of the Commission, the Group had previously noted that only one African member was serving as a Special Rapporteur and one other as Co-Chair of a Study Group. It had called upon the Commission, when making decisions about the addition of new topics, to consider a balanced approach in terms of the practical interest of Member States, as well as in the selection of Special Rapporteurs, so as to enhance the legitimacy of its work. In that regard, the Group noted the Commission's decision to include in its programme of work the topic "Prevention and repression of piracy and armed robbery at sea", with Mr. Yacouba Cissé as Special Rapporteur, and the topic "Subsidiary means for the determination of rules of international law", with Mr. Charles Jalloh as Special Rapporteur.

109. The Group congratulated the Commission and the Secretariat on the successful holding of the seventy-third session in a hybrid format, including the webcasting of the plenary meetings, which had increased the accessibility of the Commission's work.

110. **Mr. Zanini** (Italy), referring to the topic "Peremptory norms of general international law (*jus cogens*)", said that his delegation appreciated the consideration given in the fifth report of the Special Rapporteur (A/CN.9/747) to the comments and observations received from Governments, including his own. The adoption on second reading of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), together with the annex and commentaries thereto, was an important milestone in the clarification and development of international law. His delegation was pleased that the title of the text had been reformulated in line with its written observations. With regard to draft conclusion 2, Italy shared the view that *jus cogens* norms were hierarchically superior to ordinary rules of international law. It continued to attach the utmost importance to the separate categories of peremptory norms of general international law and erga omnes obligations, which protected the fundamental interests of the international community as a whole.

111. On Part Two of the draft conclusions, Italy endorsed the general approach taken to the process of identification of *jus cogens* norms, but would have welcomed further clarification concerning the concept of "evidence" and, more specifically, the individual

assertions by States, as referred to in the commentary, that a norm was accepted and recognized as one from which no derogation was permitted. As for draft conclusion 8 (Evidence of acceptance and recognition), Italy welcomed the inclusion of constitutional provisions in the list of forms of evidence. However, the Commission could have made a clear reference in the commentary to constitutional provisions as interpreted and applied in the jurisprudence of constitutional courts, so as to give proper consideration to the practice of different legal systems and the fundamental principles enshrined in the constitutions of various States.

112. In respect of draft conclusions 22 (Without prejudice to consequences that specific peremptory norms of general international law (*jus cogens*) may otherwise entail) and 23 (Non-exhaustive list), his delegation appreciated the reasons behind the decision to elaborate a non-exhaustive list of *jus cogens* norms, given possible future developments in the recognition and assertion of such norms. At the same time, it was not convinced by the Commission's decision, reflected in the commentary, not to address the thorny issue of the legal consequences of certain peremptory norms, such as the prohibition of genocide, war crimes and crimes against humanity. In the light of the wide range of forms of evidence of acceptance and recognition of the peremptory character of a norm, which included constitutional provisions and decisions of national courts, the draft conclusions could have provided further guidance to States with regard to the effects of a peremptory norm on the principle of the sovereign equality of States, and in particular on the immunity of States and State officials from foreign jurisdiction.

113. On the topic "Protection of the environment in relation to armed conflicts", his delegation welcomed the adoption on second reading of the draft principles on protection of the environment in relation to armed conflicts, together with the commentaries thereto. With regard to Part One (Introduction), it appreciated the insertion of the draft preamble, and, in draft principle 1, the accurate description of the scope *ratione temporis* and *ratione materiae* of the draft principles and the reference to their applicability in cases of occupation.

114. With regard to Part Two (Principles of general application), Italy welcomed draft principle 9 (State responsibility), which reaffirmed the compensability under international law of damage to the environment per se and reflected the general rule that internationally wrongful acts or omissions of States gave rise to international responsibility and entailed the duty of the perpetrator to make full reparation for the injury caused. Concerning draft principle 13 (General protection of the environment during armed conflict), it would have welcomed an elaboration in the commentary of useful parameters and concrete examples to help clarify the definition of "widespread, long-term and severe damage".

115. As to Part Three (Principles applicable during armed conflict), Italy particularly appreciated the application of the cardinal principles of humanitarian law in relation to the protection of the environment, as set out in draft principle 14. The principle of precautions should be interpreted in such a way as to ensure compliance with both the principle of prevention and the precautionary principle, which were at the core of international environmental law. Regarding the principle of proportionality, no attack directed at a military objective should be considered proportionate when it was intended, or might be expected, to cause widespread, long-term and severe damage.

116. His delegation wondered why draft principle 18 (Protected zones) did not refer to the potential designation of areas of environmental importance by virtue of instruments of international law other than agreements, using wording similar to that found in draft principle 4 (Designation of protected zones). Nonetheless, it appreciated the point made by the Commission in the commentary to draft principle 18 that the term "agreement" should be understood in its broadest sense as including mutual as well as unilateral declarations accepted by the other party involved, treaties and other types of agreements, as well as agreements with non-State actors.

117. Italy welcomed the inclusion of a separate Part Four covering principles applicable in situations of occupation and was pleased that the spatial scope of draft principle 21 (Prevention of transboundary harm) had been expanded. However, the issue of transboundary environmental harm, given its importance in international law, should also have been addressed in relation to contexts other than situations of occupation. With regard to draft principle 20 (Sustainable use of natural resources), as his delegation had previously observed, the Commission could have made more specific reference to the application of the core principle of self-determination of peoples in relation to the use of natural resources in the context of occupation. That said, the commentary to the draft principle contained valuable explanations as to the notion of "protected population" and the obligations of an occupying Power with regard to natural resources in occupied territories.

118. **Ms. Flores Soto** (El Salvador) said, with regard to the topic "Peremptory norms of general international law (*jus cogens*)", that her delegation welcomed the

adoption on second reading of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), which maintained a balance between State practice and the relevant jurisprudence of international tribunals and other bodies. The main purpose of the draft conclusions was to provide guidance for those required to identify norms of *jus cogens* and apply the legal consequences that arose from the identification of such norms, including serious breaches of, or failure to fulfil, obligations arising under such norms. However, the draft conclusions might also have binding effects if, over time, they were repeatedly applied in practice with the legal expectation of compliance. Her delegation welcomed the inclusion of a non-exhaustive list of *jus cogens* norms in the annex to the draft conclusions, which was useful in that it set out which norms the Commission itself had identified as *jus cogens* norms.

119. With regard to the identification of peremptory norms of international law, her delegation was pleased to note that the phrase "very large majority" in draft conclusion 7 (International community of States as a whole) had been changed to "very large and representative majority" to reflect the idea that an assessment in which a majority was determined had to be qualitative as well as quantitative. The acceptance and recognition by the international community of States as a whole required that the acceptance and recognition be across regions, legal systems and cultures. On paragraph 2 of draft conclusion 8 (Evidence of acceptance and recognition), it would have been appropriate to clarify in the commentary which international organizations or intergovernmental conferences were being referred to and specify their scope, given that the category "international organizations" could include organizations with particular specializations at the regional level. As to draft conclusion 19 (Particular consequences of serious breaches of peremptory norms of general international law (*jus cogens*)), care should be taken in the commentary – for example, when attempting to explain the duty of cooperation among States to bring to an end serious breaches of obligations arising under *jus cogens* norms – not to attribute too much value to the advisory opinions of the International Court of Justice, given that they were non-binding. Lastly, her delegation stressed the importance of respecting the principle of free choice of means for the peaceful settlement of disputes, in accordance with Article 33 of the Charter of the United Nations.

120. With regard to the topic "Protection of the environment in relation to armed conflicts", her delegation attached great importance to the protection of the right to a healthy environment, which had been established as a human right in important instruments such as the 1972 Declaration of the United Nations Conference on the Human Environment and had also been recognized in the relevant case law of regional human rights courts, including the Inter-American Court of Human Rights, which had highlighted the importance of the protection, preservation and improvement of the environment, as set out in article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. In addition, the General Assembly had for the first time recognized, in its resolution 76/300, the human right to a clean, healthy and sustainable environment.

121. The draft principles on protection of the environment in relation to armed conflicts made it possible to identify the interrelationship between international human rights law and the protection of the environment during the three temporal phases of an armed conflict, including in situations of occupation. Although it would have been useful to clarify in the commentaries what was meant by armed conflict and the differences between international and non-international armed conflicts, that was a matter that might best be discussed in other forums. The main concern was to ensure the protection of the environment, regardless of the form of occupation or the circumstances in which it had originated. The commentary to draft principle 13 (General protection of the environment during armed conflict) should have provided clarification of the use of the term "military objective" in paragraph 3 of the draft principle. The fact that the environment was a public good, transnational and universal in nature, must be reflected in the scope of environmental protection. The acceptance that the environment could be attacked if it had "become a military objective" was a continued source of concern; the provision appeared to echo automatically the terminology of civilian and military property.

122. Concerning "Other decisions and conclusions of the Commission", her delegation welcomed the new topics included in the Commission's programme of work. In its work on those topics, the Commission would always need to bear in mind the practice of all States and the views of relevant actors in the international community from different legal systems and regions of the world. On the topic "Sea-level rise in relation to international law", her delegation would make some comments at the appropriate time on the issues assigned to the Study Group, given that some of them went beyond the purview of the Commission as a subsidiary body of the General Assembly.

123. **Mr. Jia** Guide (China) said that, at a time when the world was facing a multitude of challenges, the need to maintain an international order based on the rule of law was more pressing than ever. China hoped that the Commission, in accordance with its mandate, could play a bigger role in the codification and progressive development of international law. As a subsidiary body of the General Assembly, the Commission should further enhance its exchanges with Member States, taking the views of all countries fully into account, and adopt a more targeted approach in the selection of topics based on the practical needs of the international community. Whether engaging in codification or progressive development of international law, it should fully respect State practice and opinio juris. It should also clarify the criteria used to select different forms of output, including draft guidelines, draft principles, draft conclusions and draft articles, and clearly define and categorize all topics so as to increase transparency and efficiency.

124. With regard to the topic "Peremptory norms of general international law (*jus cogens*)", his delegation noted the adoption on second reading of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) and the commentaries thereto. The elaboration of rules of international law should have a solid practical and theoretical basis and be fully consensus-based in order for such rules to be persuasive. Yet the Commission made a number of highly controversial assertions in respect of the draft conclusions, in particular the assertion that a Security Council resolution that conflicted with a *jus cogens* norm did not create obligations under international law, and the assertion that the draft conclusion therefore did not conflict with Article 103 of the Charter of the United Nations, as set out in the commentary to draft conclusion 16. There was a flaw in that legal logic; the draft conclusion would likely lead to the invalidation of obligations under Article 103. Furthermore, while a conflict between a Security Council resolution and a *jus cogens* norm was a hypothetical scenario – it had never happened in the real world – the matter of how and by whom it should be determined that such a conflict had arisen would be highly controversial. In order to maintain the authority of the Charter and the collective security mechanism of the United Nations, China called for continued caution in the consideration of the relationship between Security Council resolutions and *jus cogens*. Moreover, obligations under the Charter should be implemented in full and in good faith.

125. The main purpose of the topic was to address the identification and legal consequences of peremptory norms of general international law, rather than to list specific *jus cogens* norms. During the drafting process of the article on *jus cogens* in the Vienna Convention on the Law of Treaties, the Commission had considered making a list of *jus cogens* norms, but had eventually decided against doing so. When it had elaborated the non-exhaustive list contained in the annex to the draft conclusions, it had not conducted a thorough discussion using the identification criteria in the draft conclusions, and it was not clear what the norms on the list encompassed or whether they had any grounding in real-world practice. As international practice grew richer, recognized *jus cogens* norms based on relevant identification criteria could be gradually formulated. That would be more helpful than including a list in the draft conclusions at the current stage.

126. With regard to the topic "Protection of the environment in relation to armed conflicts", his delegation welcomed the adoption on second reading of the draft principles on protection of the environment in relation to armed conflicts and the commentaries thereto. However, given the considerable differences between international and non-international armed conflicts in terms of their nature, the parties involved and the extent of the harm caused, there were insufficient legal grounds for applying the draft principles to both types of conflicts without any distinction. For example, the newly added paragraph 2 (b) of draft principle 13 provided for the prohibition of the use of means of warfare that might cause long-term damage to the environment, a rule that had originated in Protocol I Additional to the Geneva Conventions. However, that Protocol applied only to international conflicts; whether the provision in question could be directly applied to non-international armed conflicts required further discussion.

127. **Ms. Silek** (Hungary) said, with regard to the topic "Peremptory norms of general international law (*jus cogens*)", that her delegation welcomed the adoption on second reading of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) and the commentaries thereto. The importance of such norms, for example the prohibition of aggression and the right to self-determination, could not be overstated, particularly at the current time. The draft conclusions enhanced the coherence and transparency of the international legal system by proposing a procedure for the identification of *jus cogens* norms, an exercise that was of practical relevance in inter-State relations.

128. Her delegation acknowledged that the aim of the Commission was neither to analyse the content and characteristics of *jus cogens* norms nor to provide an

exhaustive list of those norms. However, a broad interpretation of such norms by States could lead to a weakening of the very concept of *jus cogens*.

129. Although the draft conclusions constituted an important step towards a more uniform interpretation of international law, two issues were not explicitly dealt with. Firstly, although the draft conclusions addressed cases in which *jus cogens* norms conflicted with other sources of international law, they did not deal with cases in which one *jus cogens* norm conflicted with another. It was therefore unclear how States were expected to settle cases of conflicts between peremptory norms. Secondly, although *jus cogens* norms were the pillars of the international legal system, their content might change slightly over time. While the draft conclusions made clear the steps for the identification of peremptory norms, they provided no guidance on the review of those norms.

The meeting rose at 1 p.m.