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

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22-24097 (E)

The meeting was called to order at 3.05 p.m.

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

1. **The Chair** invited the Committee to continue its consideration of chapters I, II, III, IV, V and X of the report of the International Law Commission on the work of its seventy-third session (A/77/10).

2. **Mr. Visek** (United States of America) said that, with regard to the draft articles on prevention and punishment of crimes against humanity, his delegation reiterated its hope that the Committee would establish an ad hoc committee to give all States the opportunity to discuss and resolve their concerns with regard to the draft articles so that they could serve as the basis for the negotiation of a convention on crimes against humanity, which would fill an important gap in the international legal framework.

3. Turning to the topic "Peremptory norms of general international law (*jus cogens*)", and referring to the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) adopted by the Commission, he said that, since the text concerned an overarching category of international law, the Commission needed to secure the broad support of States for the content of the draft conclusions. The Commission had addressed some of the concerns raised by his and other delegations in their comments on the draft conclusions prior to their adoption by the Commission, including by adjusting the placement of draft conclusion 2 (Nature of peremptory norms of general international law (*jus cogens*)) and revising draft conclusion 21 (Recommended procedure). However, with respect to draft conclusion 7 (International community of States as a whole), one of the most important in the entire text, his delegation continued to disagree that acceptance of the peremptory character of a norm by "the international community of States as a whole"– the correct standard – could be redefined in paragraph 2 as acceptance by "a very large and representative majority of States". His delegation had previously raised concerns regarding the phrase "a very large majority"; the addition of "and representative" introduced further uncertainty with regard to the nature or degree of acceptance of a norm.

4. With regard to draft conclusion 8, paragraph 2, his delegation did not agree that resolutions adopted by an international organization were necessarily evidence of acceptance and recognition. As reflected in the Commission's conclusions on identification of customary international law, the relevant evidence was the conduct of States in connection with such resolutions. As a State's support for a resolution could reflect only political support, it would still be necessary to look at the State's individual conduct or expression of views to determine the extent to which the resolution reflected its recognition or acceptance of a legal principle.

5. With regard 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*)), while his delegation appreciated the useful clarification in the commentary that States could not unilaterally invoke *jus cogens* to avoid complying with binding Security Council resolutions and that it was highly unlikely that a Security Council resolution would, on its face, be in conflict with a *jus cogens* norm, it continued to disagree – in view of Articles 25 and 103 of the Charter of the United Nations – that a Security Council resolution could ever be rendered void owing to a conflict with *jus cogens*.

6. With regard to draft conclusion 19 (Particular consequences of serious breaches of peremptory norms of general international law (*jus cogens*)), the provisions relating to the consequences of a breach of a *jus cogens* norm for States that were not in breach of such norms did not reflect customary international law. It was inappropriate to imply in the draft conclusions, which would not serve as the basis for a treaty, that said provisions were mandatory through the use of the word "shall".

7. His delegation also continued to disagree with the inclusion and the content of the non-exhaustive list included in the annex to the draft conclusions. That list not only included norms that might be rules of customary international law, but were not peremptory, but also omitted such peremptory norms as the prohibition of piracy. Moreover, it was difficult to see the practical value of the list, as the Commission had not followed the methodology it had set forth in the draft conclusions in compiling the list. Although the Commission had acknowledged that point in the commentary, the list might still be given undue weight by judges and practitioners who might not review the lengthy commentary.

8. Given that various States continued to hold strongly divergent views on critical parts of the draft conclusions, his delegation supported the inclusion of references to the views of States in the relevant draft resolution.

9. Turning to the topic "Protection of the environment in relation to armed conflicts", he said that

his Government was deeply committed to the protection of the environment and compliance with international humanitarian law. The United States military had a robust programme to implement the law of war during military operations, including rules and principles related to the protection of the natural environment, and had adopted a number of related policies and practices. His delegation appreciated the fact that its previous comments had been taken into consideration in the set of draft principles on protection of the environment in relation to armed conflicts adopted on second reading by the Commission. However, the United States continued to have concerns regarding the intended legal status of the draft principles. In a number of them, the Commission appeared to be dictating what States "shall" or "must" do, even though those draft principles did not codify existing international law. Such phrasing was inappropriate, in particular where draft principles were aimed at progressive development rather than codification, and given that the text as a whole would not be considered as a basis for a treaty. Draft principle 5 (Protection of the environment of Indigenous Peoples) had been modified, as compared to the version adopted on first reading, and now appeared to set out a new substantive legal obligation, the basis for which was unclear.

10. Although his Government agreed with the Commission's recognition in the general commentary to the draft principles that international humanitarian law was the *lex specialis* applicable to armed conflict, some of the draft principles set out rules that conflicted with that law. For example, in draft principle 8 (Human displacement) and draft principle 14 (Application of the law of armed conflict to the environment), the Commission appeared to suggest that the protection of the environment should be prioritized over international humanitarian law rules concerning efforts aimed at protecting human life and alleviating human suffering during armed conflict or at providing relief to persons displaced by armed conflict. Doing so would not only conflict with existing international law, but would fail to reflect the humanitarian purpose of international humanitarian law, which, as reflected by the term "humanitarian", was an anthropocentric body of law, prescribing duties, rights and liabilities for human beings and prioritizing the protection of human life. The application of international humanitarian law to the environment in a manner that deviated from its traditional focus could conflict with existing international humanitarian law requirements or diminish existing protections for civilians, detainees or other persons protected by international humanitarian law.

11. Lastly, the draft principles included two recommendations on due diligence and liability of business enterprises, but contained no provisions applicable to any other non-State actors, such as insurgents, militias, criminal organizations and individuals who had obligations under international humanitarian law. It was unclear why the Commission had singled out corporations for special attention given that many of the other categories of non-State actors might have a more direct role in the conduct of armed conflict.

12. With regard to "Other decisions and conclusions of the Commission", his delegation supported the three new topics that had been added to the Commission's current programme of work. His delegation continued to have concerns about the Commission's working methods, including the lack of clarity between codification and progressive development and the confusion surrounding the way in which the Commission chose the form of its work products. Both those issues affected how the Commission developed its work products and how they were to be understood by the broader community.

13. **Mr. Kessel** (Canada), referring to the topic "Protection of the environment in relation to armed conflicts", said that his delegation was pleased that a number of the concerns submitted by Canada on an earlier version of the draft principles on protection of the environment in relation to armed conflicts had been either fully or partially addressed by the Commission in the version of the draft principles adopted on second reading, most notably by the removal of the former draft principle 15 (Environmental considerations). Some of its earlier comments remained relevant, however. In that regard, his delegation reiterated that, in the absence of corresponding State practice and *opinio juris*, treaty obligations applicable during international armed conflict should not be presented as customary rules applicable during non-international armed conflict. Canada continued to regret the Commission's decision not to distinguish between international and non-international armed conflicts with respect to the applicability of the draft principles. That decision detracted from the overall coherence of the draft principles, especially in Part Three (Principles applicable during armed conflict), which contained principles that were based on articles of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). Canada also continued to regret the Commission's use of mandatory verbs in the wording of several draft principles in which it was seeking either to create new norms or to extend

well-settled rules. Mandatory verbs should be reserved for draft principles constituting *lex lata*.

14. His delegation remained concerned that common article 1 of the Geneva Conventions of 12 August 1949 was interpreted in the commentary to draft principle 3 (Measures to enhance the protection of the environment) as requiring States to exert their influence to prevent and stop violations of the law of armed conflict. Canada did not accept that common article 1 entailed a duty for States that were not party to an armed conflict to ensure that all State and non-State parties to that armed conflict respected the Geneva Conventions.

15. Turning to the topic "Peremptory norms of general international law (*jus cogens*)", he said that while his delegation appreciated the influential role that the Commission had played over many years in the development, acceptance and mainstreaming of *jus cogens* in international law, it did not agree with all aspects of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) and the commentaries thereto, some of which needed to be further refined and clarified. In particular, draft conclusion 5 (Bases for peremptory norms of general international law (*jus cogens*)) required further consideration, since treaties were binding only on their parties and could not be considered as a basis for the existence of *jus cogens* in and of themselves. While treaties could be an important source for understanding how different groups of States viewed certain existing and emerging norms, they could not, on their own, inform obligations under customary international law.

16. **Ms. Arumpac-Marte** (Philippines), referring to the topic "Peremptory norms of general international law (*jus cogens*)" and the draft conclusions on the identification and legal consequences of peremptory norms of general international law (*jus cogens*), said that, while her delegation noted the amendment of paragraph 2 of draft conclusion 7 (International community of States as a whole) to read "acceptance and recognition by a very large and representative majority of States is required for the identification of a norm as a peremptory norm of general international law (*jus cogens*)", it continued to hold the view that such wording was inconsistent with the definition provided in draft conclusion 3, in which a peremptory norm was defined as one that was "accepted and recognized by the international community of States as a whole", based on article 53 of the Vienna Convention on the Law of Treaties.

17. The role of national courts in the process of identification of peremptory norms was of particular interest to the Philippines, as the decisions of its national courts formed part of the law of the land. Under paragraph 2 of draft conclusion 8 (Evidence of acceptance and recognition), the decisions of national courts constituted a form of evidence, among many, of acceptance and recognition of a norm of general international law as a peremptory norm. That was related to draft conclusion 4 (Criteria for the identification of a peremptory norm of general international law (*jus cogens*)), under which the norm in question was required to be not only a norm of general international law but also one that was accepted and recognized by the international community of States as a whole as a norm from which no derogation was permitted and which could be modified only by a subsequent norm of general international law having the same character. Furthermore, draft conclusion 9, paragraph 1, provided that regard might also be had to the decisions of national courts as a subsidiary means for determining the peremptory character of norms of general international law.

18. Non-State actors, including sub-State entities, civil society and individuals, when petitioning the Supreme Court of the Republic of the Philippines for redress of grievances, had invoked international legal norms, including *jus cogens*, on at least three occasions. In line with draft conclusion 8, the Court's decisions in those cases formed part of evidence of State practice. That dynamic could perhaps be reflected in the commentary to paragraph 3 of draft conclusion 7 (International community of States as a whole).

19. In 2010, in dismissing the petition aimed at compelling action by the Government of the Philippines with regard to wartime reparations on the basis of, among others, obligations arising from *jus cogens* in *Vinuya* et al. *v. Executive Secretary* et al., the Court had explained that, although there was consensus that certain international norms had attained the status of *jus cogens*, the Commission had been unable to reach consensus on the proper criteria for identifying peremptory norms. The Court had further cited the commentary to the draft articles on the law of treaties contained in the Special Rapporteur's second report (A/CN.4/156), in which the Special Rapporteur had concluded that it was prudent to leave the full content of the rule to be worked out in State practice and in the jurisprudence of international tribunals.

20. In 2011, in relation to a petition questioning the validity of non-surrender agreements in *Bayan Muna as represented by Representative Satur Ocampo* et al. *v. Alberto Romulo, in his capacity as Executive Secretary* et al., the Court had stated that a *jus cogens* norm held the highest hierarchical position among all other

customary rules and principles and that, as a result, *jus cogens* norms were deemed peremptory and non-derogable. The Court had deemed that, when applied to international crimes, *jus cogens* norms were so fundamental to the existence of a just international legal order that States could not derogate from them, even by agreement. Such crimes related to the principle of universal jurisdiction, meaning in effect that any State could exercise jurisdiction over an individual who committed certain heinous and widely condemned offences, even when no other recognized basis for jurisdiction existed.

21. In 2021, in *Pangilinan* et al. *v. Cayetano* et al., the Court had stated that, generally, *jus cogens* rules of customary international law could not be amended by treaties. It had further stated that, since the provisions of the Rome Statute could be amended in line with articles 121, 122 and 123 thereof, the Rome Statute was not *jus cogens* and, at best, its provisions were articulations of customary law.

22. The evolution of the national court's reasoning on *jus cogens* underscored the value of clarifying in the draft conclusions the state of international law on the topic and establishing the criteria for the identification of peremptory norms of general international law and its legal consequences. In paragraph (5) of its commentary to draft conclusion 9, paragraph 1, the Commission had stated that it had intended to convey that, although the decisions of national courts could serve as subsidiary means for the determination of peremptory norms of general international law (*jus cogens*), they should be resorted to with caution, and the weight to be accorded to such national decisions would be dependent on the reasoning applied in that particular decision. The Commission appeared to be suggesting that the decisions of some national courts had more weight than others, depending on the reasoning applied. Her delegation proposed that the commentary be revised to read "consideration of such national decisions will depend on their value as evidence in relation to conclusion 4".

23. With regard to Part Three (Legal consequences of peremptory norms of general international law (*jus cogens*)), her delegation reiterated its reservations regarding the utility of including the non-exhaustive list of peremptory norms of international law as an annex to the draft conclusions, items (a) to (g) of which were already penalized under her country's national law. The annex could be placed in the commentary with a note on the application of the criteria.

24. On the topic "Protection of the environment in relation to armed conflicts", her delegation welcomed the Commission's timely adoption of the draft principles on protection of the environment in relation to armed conflicts.

25. With regard to "Other decisions and conclusions of the Commission", the Philippines welcomed the addition of new topics to the current programme of work, including "Settlement of international disputes to which international organizations are parties" and "Subsidiary means for the determination of rules of international law". The Philippines also appreciated the Commission's decision to include the topic "Non-legally binding international agreements" in its long-term programme of work. An examination of the nature and regime of such agreements was long overdue, in view of the continuing proliferation of non-legally binding agreements in inter-State relations. Having reviewed the topic syllabus, her delegation hoped that the scope of the topic would not be too restrictive. It saw value in the Commission's work on the topic taking the form of guidelines and model provisions.

26. Lastly, the Philippines supported the provision of honorariums to Special Rapporteurs and the establishment of a trust fund for that purpose.

27. **Ms. Nordin** (Malaysia), referring to the topic "Protection of the environment in relation to armed conflicts", said that her delegation welcomed the Commission's adoption of the draft principles on protection of the environment in relation to armed conflicts on second reading. While they were not intended to be binding, the formulations used in several of the draft principles implied the existence of binding obligations and should therefore be reworded so as not to give that impression. It should be noted that the absence of a commitment under a relevant international instrument had not kept Malaysia from assisting vulnerable persons.

28. With regard to draft principle 12 (Martens Clause with respect to the protection of the environment in relation to armed conflicts), her delegation noted that some States had found it difficult to agree on the meaning and application of the principles of humanity and public conscience in the context of the Martens Clause. As Judge Shahabuddeen of the International Court of Justice had observed in his dissenting opinion in *Legality of the Threat or Use of Nuclear Weapons*, the Martens Clause provided authority for treating the principles of humanity and dictates of public conscience as principles of international law, leaving the precise content of the standard implied by those principles of international law to be ascertained in the light of changing conditions, inclusive of changes in the means and methods of warfare and the outlook and tolerance

levels of the international community. Thus, it was crucial for the Commission to take into consideration differing views and practices of States concerning the Martens Clause to ensure its effective application within the context of protection of the environment in relation to armed conflict.

29. Her delegation noted the consistent use of the term "environment" in all draft principles. The term was appropriate and provided a broader context for the draft principles, including the aesthetic value of zones subject to protection, in line with her country's domestic law. Her delegation agreed with the Commission's view that the use of the term "cultural" in draft principle 4 reflected the existence of a close linkage between culture and the environment, as further reflected in draft principle 5, relating to the rights of Indigenous Peoples, and draft principle 13, relating to the general protection of the environment during armed conflict.

30. Turning to "Other decisions and conclusions of the Commission", her delegation welcomed the inclusion of the topic "Prevention and repression of piracy and armed robbery at sea" in the Commission's current programme of work. The work of the Commission would bring much needed clarity to a pressing issue that was integral to the progressive development of international law and had a profound impact on the shipping industry and on the international community as a whole. Her delegation noted that the study on the topic would address such issues as the definition of piracy, the punishment of piracy, cooperation in the suppression of piracy and the exercise of jurisdiction over the crime. The current international framework was insufficient to curb piracy, in view of the lack of a mechanism thereunder for the successful prosecution of pirates by States. Malaysia agreed with the newly appointed Special Rapporteur that a number of related issues needed to be clarified to gain a better understanding of the definition of piracy and the application of universal jurisdiction to the crime of piracy. The Commission's work on the topic would allow those issues to be addressed.

31. Malaysia also welcomed the inclusion of the topic "Subsidiary means for the determination of rules of international law" in the Commission's current programme of work. Article 38 of the Statute of the International Court of Justice had long been applied in the development of international law. Nevertheless, Malaysia was of the view that further clarity regarding the meaning of the phrase "subsidiary means" in Article 38, paragraph 1 (d), thereof would be helpful for the application of the provision. Noting that the Commission had been established after the International Court of Justice, Malaysia was of the view that a close review of the drafting history of that subparagraph could prove useful in clarifying the current and intended role of subsidiary means in the determination of rules of international law. Given that the topic required detailed analysis by Member States before consensus could be found at the international level, Malaysia looked forward to the information to be provided by Member States and the memorandum to be prepared by the Secretariat for the Commission's future work on the topic.

32. **Mr. Tichy** (Austria) said that it was regrettable that the Commission had been unable to hold its traditional exchanges with regional organizations on international law issues during the current session of the General Assembly. His delegation hoped that those important exchanges would be resumed at the next session.

33. On the topic "Peremptory norms of general international law (*jus cogens*)", Austria welcomed the Commission's adoption of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) on second reading and, in general, concurred with the resulting text. The topic was of the utmost importance, especially as the international community was confronted with a serious breach of a peremptory norm – the prohibition of the use of force – in the context of the aggression against Ukraine.

34. Regarding draft conclusion 11 (Separability of treaty provisions conflicting with a peremptory norm of general international law (*jus cogens*)), the wording of paragraph 1, stating that a treaty which, at the time of its conclusion, conflicted with a *jus cogens* norm, was void in whole, was very helpful. However, a more specific expression would have been desirable in paragraph 2 (c), which read "continued performance of the remainder of the treaty would not be unjust". The term "unjust" was vague and belonged to legal philosophy rather than to the terminology of positive law. Such alternative wording as "continued performance would not be against the common interest of the parties" would have been preferable.

35. Turning to draft conclusion 23, he said that, by drawing up a list of peremptory norms, even if the list was only indicative, the Commission had made an important step towards clarifying basic notions of international law. However, it would have been preferrable for the non-exhaustive list to include the prohibition of the use of force as a peremptory norm, rather than the prohibition of aggression, as defined in General Assembly resolution 3314 (XXIX) of 1974. The prohibition of the use of force contained in Article 2,

paragraph 4, of the Charter of the United Nations was a broader concept, as it also encompassed the threat of the use of force. The draft conclusion would have been brought closer to the wording of the Charter by replacing "prohibition of aggression" by "prohibition of the use of force".

36. The reference to "basic rules of international humanitarian law" as a peremptory norm was not sufficiently precise. The Commission's references, in paragraph (10) of its commentary to draft conclusion 23, to its commentary to article 40 of its articles on responsibility of States for internationally wrongful acts and to the report of the Study Group on the fragmentation of international law, in which "the prohibition of hostilities directed at civilian population" was mentioned as an example of basic rules of international humanitarian law, were insufficient.

37. His delegation's full comments on the draft conclusions could be found in its written statement, available in the eStatements section of the *Journal of the United Nations*.

38. Turning to the topic "Protection of the environment in relation to armed conflicts", he said that the draft principles on protection of the environment in relation to armed conflicts adopted on second reading by the Commission presented a full picture of the regime relating to that important area of international law. It was unfortunate that the need for such guidance arose on a daily basis in view of the numerous armed conflicts around the world, including the war resulting from the aggression against Ukraine.

39. His delegation concurred with most of the draft principles and welcomed the fact that they applied to both international and non-international armed conflicts. It would have been preferable for that to be reflected not only in the preamble and commentary, but also in the draft principles themselves. Austria also found it regrettable that a definition of the term "environment" had not been included, as there were many divergent interpretations of it in international practice. The Commission had not offered much guidance in the commentary in that regard, stating only that the change from "natural environment" to "environment" had been made to align the draft principles with the "established terminology of international environmental law". His delegation understood the term in the sense used in the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, where the term "environment" included "natural resources, both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors, and the characteristic aspects of the landscape".

40. In the light of the current critical situation in Ukraine, and in relation to draft principle 4 (Designation of protected zones) and draft principle 18 (Protected zones), Austria was convinced that States should designate protected zones around nuclear power plants and that such zones should be respected by all States. A similar obligation already existed under article 260 (Safety zones) of the United Nations Convention on the Law of the Sea with regard to artificial maritime installations. The current situation at the Zaporizhzhia nuclear power plant, which was particularly vulnerable and risked catastrophic damage according to the International Atomic Energy Agency, had demonstrated the necessity and urgency of establishing such zones. Although attacks against works and installations containing dangerous forces were already prohibited under article 56 of Additional Protocol I to the Geneva Conventions of 12 August 1949, including when such objects were military objectives, a nuclear power plant should be kept entirely outside any military action to ensure that it never became a military objective. His delegation drew the attention of the Commission to a discrepancy between draft principle 4 and draft principle 18, the latter of which should have been aligned with the former, which provided for the designation of protected zones not only by agreement, but also by other means.

41. Austria welcomed, once again, the fact that draft principles 19 to 21 relating to situations of occupation applied to all forms of "occupation" in the sense of international humanitarian law. Under article 2 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949, an occupation existed even when it met with no armed resistance. That understanding had been confirmed by the International Court of Justice in its advisory opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. The current situation in Ukraine proved the need and the urgency of such rules. Draft principle 19 (General environmental obligations of an occupying Power) should include a strong recommendation that the occupying Power cooperate with international institutions, such as the International Committee of the Red Cross and the International Atomic Energy Agency, in order to prevent or minimize environmental damage. In paragraph 3 of the draft principle, it should be emphasized that the international rules on the protection of the environment continued to apply in the occupied territory. In the same vein and in the light of current practice to the contrary, his delegation drew attention to the fact that draft principle 20

(Sustainable use of natural resources) prohibited the excessive use of natural resources by the occupying Power, given that such resources must be used for the benefit of the population of the occupied territory.

42. With regard to "Other decisions and conclusions of the Commission", Austria, as a host country to many international organizations, welcomed the inclusion of the topic "Settlement of international disputes to which international organizations are parties" in the Commission's current programme of work. Private law disputes with international organizations often had implications for host countries, so Austria welcomed the idea that such disputes would be considered, as suggested in the Commission's report (A/77/10, para. 238). His delegation also welcomed the appointment of the Austrian member of the Commission, Mr. Reinisch, as Special Rapporteur for the topic.

43. Austria was equally in favour of the inclusion of the topic "Prevention and repression of piracy and armed robbery at sea" in the Commission's current programme of work. Given the importance of regulating criminal jurisdiction, Austria had followed recent developments in that field despite being a landlocked country, and trusted that the Commission's work would provide valuable insights. Although Austria would have preferred the Commission to study the topic of universal criminal jurisdiction, given that the principle of universal jurisdiction had been the subject of protracted discussions in the Committee, it nonetheless welcomed the Commission's decision to include the topic "Subsidiary means for the determination of rules of international law" in its current programme of work, bearing in mind that subsidiary means played an important role in practice and their exact status needed to be ascertained at a methodological level.

44. His delegation also welcomed the inclusion of the topic "Non-legally binding international agreements" in the Commission's long-term programme of work. The topic was very important for the practical work of legal advisers. However, his delegation was strongly in favour of reserving the word "agreement" for legally binding texts and changing the title of the topic to "Non-legally binding international arrangements", to avoid confusion.

45. **Ms. Sekhar** (India), speaking on the topic "Peremptory norms of general international law (*jus cogens*)", and referring to the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), said that her delegation generally agreed that, as stated in draft conclusion 4 (Criteria for the identification of a peremptory norm of general international law (*jus cogens*)), in order to identify a peremptory norm of general international law it was necessary to establish that the norm was accepted and recognized by the international community of States as a whole as a norm from which no derogation was permitted and which could be modified only by a subsequent norm of general international law having the same character. With reference to both draft conclusion 4 and draft conclusion 5 (Bases for peremptory norms of general international law (*jus cogens*)), it was her delegation's view that the norm should have developed to a sufficient degree in all sources of law, in particular customary law and general principles of law. All those sources played an important role in the identification of *jus cogens* norms.

46. Her delegation took note of draft conclusions 6 to 9, which concerned acceptance and recognition of a norm as a peremptory norm of general international law (*jus cogens*) by the international community, the evidence for such acceptable and recognition, and the subsidiary means for the determination of the peremptory character of norms of general international law. In that connection, it was of the considered opinion that the qualitative assessment for identification of the peremptory status of a norm should explicitly reflect its acceptance and recognition across regions, legal systems and cultures.

47. Since peremptory norms of general international law (*jus cogens*) were hierarchically superior to other norms of international law, the standard used to identify them must be clear and unambiguous. Her delegation hoped that the draft conclusions and the commentaries thereto would be helpful to those called upon to identify *jus cogens* norms and to apply their legal consequences. Some of the norms included in the non-exhaustive list of peremptory norms contained in the annex to the draft conclusions were not well defined in international law and States differed on the interpretation of their applicability. The norms themselves, as well as the desirability of including such a list, should therefore be subject to further discussion.

48. With regard to "Other decisions and conclusions of the Commission", her delegation welcomed the Commission's inclusion of the topics "Settlement of international disputes to which international organizations are parties", "Subsidiary means for the determination of rules of international law" and "Prevention and repression of piracy and armed robbery at sea" in its current programme of work. The Commission's work on the topic "Prevention and repression of piracy and armed robbery at sea" would contribute to addressing the challenges that affected the safety and security of international navigation. In its

work, it would be important for the Commission to recognize the relevance of the international legal framework established by the United Nations Convention on the Law of the Sea in the context of traditional and non-traditional security challenges in the maritime domain, including piracy and armed robbery at sea.

49. **Ms. Jiménez Alegría** (Mexico) said that the fact that the Commission had completed fewer codification projects in recent years did not make its work any less relevant. The progressive development of international law was a momentous task aimed at providing legal certainty to the international community and required the support and collaboration of States. The relationship between the Commission and the Committee was thus of fundamental importance.

50. With regard to the topic "Peremptory norms of general international law (*jus cogens*) and the draft conclusions on identification and legal consequences of peremptory norms of general international law *(jus cogens*) adopted by the Commission on second reading, her delegation agreed with the content of draft conclusion 3 (Definition of a peremptory norm of general international law (*jus cogens*)). It also recognized the importance of having a non-exhaustive list of examples of *jus cogens* norms and the relevance of the guidelines set out in the draft conclusions for identification of peremptory norms of general international law (*jus cogens*) and their consequences. Those elements were directly related to articles 40 and 41 of the articles on responsibility of States for internationally wrongful acts adopted by the Commission in 2001.

51. The draft conclusions would give new impetus to discussions in various forums regarding the relevance of the identified norms, such as the prohibition against aggression in the context of the measures that could be taken by the Security Council to maintain or restore international peace and security, in particular with regard to the use of veto powers by its permanent members and the legal consequences thereof. Her delegation agreed with the Commission's recommendation in respect of the draft conclusions, in the hope that States would make use of them in their study and application of international law.

52. Turning to the topic "Protection of the environment in relation to armed conflicts", she said that her delegation underscored the importance of draft principle 13 (General protection of the environment during armed conflict), in particular the prohibition against the use of methods and means of warfare that were intended to cause widespread, long-term and severe damage to the environment. One example of such means of warfare were nuclear weapons. In addition to the Treaty on the Prohibition of Nuclear Weapons, Mexico had proposed for a number of years that the use of nuclear weapons be criminalized under the Rome Statute as an international crime.

53. With regard to draft principle 10 (Due diligence by business enterprises) and draft principle 11 (Liability of business enterprises), her delegation agreed that it was time for companies to take responsibility for the negative effects of their actions in general, including in relation to human health, and it was all the more important for them to do so in situations of armed conflict. Mexico supported the Commission's recommendation on the topic, consideration of which was particularly important in view of the current armed conflict in Ukraine and the nuclear risk it entailed.

54. In conclusion, she noted that the Commission and the Committee had a symbiotic relationship. The Committee needed to overcome its inertia and take action on a number of topics that had been concluded by the Commission. The Committee also needed to review, in a transparent manner, the list of such topics on its agenda in order to identify those that could be considered to have been concluded, in order to make room on the agenda for the inclusion of new topics.

55. Her delegation also reiterated its request that, in order to promote greater dialogue and understanding between the two bodies, the Commission regularly hold sessions in New York, without prejudice to its headquarters in Geneva. That would give members of the Committee an unparalleled opportunity to interact with the Commission and its members and better understand its methods, procedures and processes.

56. **Mr. Abdelaziz** (Egypt), referring to "Other decisions and conclusions of the Commission", said that his delegation 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 met the needs of States and were ripe for codification and progressive development. His delegation was pleased that two African members of the Commission had been appointed as Special Rapporteurs and encouraged the Commission to continue its efforts to ensure that the range of regions and cultures were represented.

57. Referring to the topic "Peremptory norms of general international law (*jus cogens*)", he said that his delegation noted the concerns raised by other Committee members at the current meeting regarding

the content of some of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*). In broad terms, his delegation was convinced of the value of the Commission's efforts to define peremptory norms of international law and their legal effects and to clarify their relationship with other norms of customary law and general principles of international law.

58. With regard to the topic "Protection of the environment in relation to armed conflicts", his delegation welcomed the Commission's efforts to codify and develop international environmental law, given the unprecedented need for environmental protection. It appreciated the comprehensive nature of the draft principles on protection of the environment in relation to armed conflicts, in which attention was given to environmental protection before, during and after armed conflict; designation of protected zones; State responsibility; liability of business enterprises; and general environmental obligations of an occupying Power. The idea that even war had limits was not just a slogan; States had an obligation to comply with the Geneva Conventions and their Additional Protocols, and to protect the environment in situations of war. His Government would continue to support international efforts to protect the environment, including by hosting the twenty-seventh session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, to be held in Sharm el-Sheikh, Egypt, in November 2022.

59. Lastly, cooperation between the Commission and the Sixth Committee should be strengthened, and the Commission should closely assess the international situation when selecting new topics. The Commission should adopt clear standards for determining the form that its output would take, in order to ensure that such output received the necessary appreciation and support from Member States.

60. **Ms. Von Uslar-Gleichen** (Germany), referring to the topic "Peremptory norms of general international law (*jus cogens*)", said that *jus cogens* norms and their legal consequences remained a matter of the utmost importance for the international legal order. Her delegation wished to reiterate, however, that the non-exhaustive list of specific *jus cogens* norms included as an annex to the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) might be erroneously interpreted as establishing a status quo that could impede the future development of *jus cogens*. The "without prejudice" clause contained in draft conclusion 23 and the emphasis placed on the list's non-exhaustive character, while welcome, had not allayed her delegation's concerns regarding the necessity and usefulness of such a list. The commentary to the draft conclusion, in which the Commission indicated that the list had not been prepared on the basis of the methodology set out in the draft conclusions, also failed to provide persuasive arguments in favour of maintaining the list in the annex despite the concerns expressed by many States; rather, it might have the opposite effect.

61. Her delegation was pleased to note that the commentary to draft conclusion 2 now included a clarification to the effect that the characteristics of *jus cogens* norms set forth in the draft conclusion itself were not intended to constitute additional criteria for the identification of such norms. However, the wording used in the commentary was unclear. The clarification was immediately followed by a characterization of the elements in question as providing "context in the assessment of evidence", suggesting that, while the existence of those characteristics was insufficient as a basis for the identification of a *jus cogens* norm, it was sufficient to support an assumption to that effect. Because of the specific reference to "fundamental values of the international community" in the draft conclusion and the ambiguity inherent in the commentary, the risk of misinterpretation had not been mitigated.

62. Her delegation shared the concerns raised by a number of States in respect of the lack of State practice to support draft conclusion 16 (Obligations created by resolutions, decisions or other acts of international organizations conflicting with a peremptory norm of general international law) and the risk of its provisions being abusively invoked as grounds to unilaterally disregard binding decisions of the Security Council. Such misuse could undermine the authority of the Security Council acting under Chapter VII of the Charter of the United Nations and jeopardize the overall effectiveness of its actions. A more thorough consideration of States' comments, especially in areas where practice was scarce, might prove beneficial to the final output.

63. With regard to the topic "Protection of the environment in relation to armed conflicts", the aggression by Russia against Ukraine and its impact illustrated the importance of the Commission's work. Her delegation would be submitting a written statement, containing detailed comments, to the Secretariat.

64. **Mr. Popkov** (Belarus), referring to the topic "Peremptory norms of general international law (*jus cogens*)", said that *jus cogens* norms had superior legal, moral and political force in the eyes of the international

community and therefore were essential for the stability and integrity of international law. *Jus cogens* norms were a cornerstone of modern international law, defining its basic content, and served as international legal standards from which no derogation was permitted in international relations. *Jus cogens* norms reflected the fundamental values of international law and international relations from which flowed the general obligations of States, international organizations and other subjects of international law.

65. It made sense that the starting point for the elaboration of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) had been the provisions of the 1969 and 1986 Vienna Conventions on the Law of Treaties, in which a peremptory norm was understood to be a norm of international law that was "accepted and recognized by the international community of States as a whole". However, it would have been helpful to highlight one of the directions of the progressive development of international law, by also including provisions on fundamental regional principles and norms governing inter-State relations. Some principles and norms provided for in international legal texts and documents of leading regional international organizations and forums, such as the 1975 Final Act of the Conference on Security and Cooperation in Europe, were as categorical as peremptory norms.

66. As *jus cogens* norms were hierarchically superior to other rules of international law, and to avoid undesirable international disputes over their status, peremptory norms should be accepted and recognized on the basis of consensus among the greatest possible number of States that was representative, in geographical, legal, cultural and civilizational terms, of all the key groups and categories of members comprising the international community, including the States that wielded the greatest influence at the global and regional levels. The Commission had partially explained in its commentary to draft conclusion 7 (International community of States as a whole) what was meant by the phrase "representative majority of States" in the context of acceptance and recognition of peremptory norms. However, it would have been preferable if a clear reference to the relevant criteria had been included in the draft conclusions to ensure a common understanding of the mechanism by which *jus cogens* norms were formed in international law and to prevent grave misunderstandings among subjects of international law in that regard. A representative majority of States would necessarily need to include States without whose support it would be impossible to implement the *jus cogens* norm in question. Unless those States recognized a *jus cogens* norm and implemented and upheld it, the international community would not have the legitimate expectation that the peremptory international obligation arising from such a norm would be fulfilled. As a result, the norm would not become fully fledged and obligatory for the entire international community, remaining instead merely a declaration and an example of *lex ferenda*.

67. As stated in draft conclusion 5, paragraph 1, customary international law, meaning a general practice accepted as law (*opinio juris*), was the most common basis for peremptory norms of general international law (*jus cogens*). In addition, there were several universal international agreements, first and foremost the basic principles enshrined in the Charter of the United Nations, which were fundamental principles of international law and had the status of general international law norms arising not only from treaty law, but also from customary law. A greater emphasis should have been placed in the draft conclusions on the peremptory nature of the principles enshrined in the Charter and their unique importance for the international legal order. The founders of the United Nations had believed that the principles of the Charter must be generally accepted and be hierarchically superior to all other international obligations of States.

68. His delegation agreed with the view that peremptory norms of general international law evolved gradually, as a result of developments in inter-State relations, and so there could be no single, officially recognized and exhaustive list of such norms. Nonetheless, the non-exhaustive list included in the annex to the draft conclusions could be expanded with the addition of all generally recognized principles of modern international law; a set of basic norms related to environmental protection and the prohibition against massive pollution; and norms related to the legal regime governing international territories and spaces. Further discussion was needed on that point in the Committee.

69. On the whole, the Commission and the Special Rapporteur had taken a comprehensive and creative approach to the numerous problematic aspects of the concept of *jus cogens*, given the current lack of clarity regarding the secondary norms applicable to it. The draft conclusions might reinforce the concept of *jus cogens* in international law. There was currently insufficient practice implementing *jus cogens* norms and the concept of *jus cogens* was also not actively used in international instruments, with the exception of the Vienna Conventions on the Law of Treaties, the articles on responsibility of States for internationally wrongful acts, the articles on the responsibility of international

organizations and some decisions of the International Court of Justice.

70. The draft conclusions that addressed the consequences of peremptory norms for treaties, rules of customary international law, the unilateral acts of States and resolutions of international organizations, did not always reflect *lex lata* and some contained elements *de lege ferenda*. In view of the special status of peremptory norms in international law and their ability to fundamentally change the rules governing international relations, those draft conclusions needed to be studied closely in order to ensure a balanced and predictable approach to their practical implementation. In particular, the idea that the persistent objector rule did not apply to peremptory norms of general international law, as set out in paragraph 3 of draft conclusion 14 (Rules of customary international law conflicting with a peremptory norm of general international law (*jus cogens*)) continued to be of concern in cases where it could not be observed in good faith that the criteria for the acceptance of peremptory norms had been met. That provision should therefore be examined more closely. There was a direct link between draft conclusion 14, paragraph 3, and the implementation and correct understanding of draft conclusion 7 (International community of States as a whole).

71. Although the Commission's output generally served as the basis for the elaboration of international conventions and legally binding instruments, it seemed premature to transform the draft conclusions into an international agreement until it was clear whether they were accepted by a majority of States. Instead, the draft conclusions could be adopted as a practical guidance document or a set of methodological recommendations. Consequently, it was not currently appropriate to include draft conclusion 21 concerning the procedure for settling disputes over the invalidity or termination of a rule of international law that was inconsistent with a *jus cogens* norm by bringing it before the International Court of Justice or through other binding international mechanisms. A general reference to the need to seek a solution for dispute settlement using the means indicated in Article 33 of the Charter would be sufficient.

72. Turning to the topic "Protection of the environment in relation to armed conflicts", he said that Belarus, which had a number of unique ecosystems in its territory, attached great importance to the development of international legal norms in that field, having endured the aftermath of the Chornobyl disaster and the hardships of the Second World War and other destructive wars conducted with no regard for international law.

73. The draft principles on protection of the environment in relation to armed conflicts adopted by the Commission on second reading were sufficiently balanced and reflected current trends in the field of international law. The Commission had been correct in taking the progressive decision to elaborate a single set of draft principles that covered situations arising before, during and after an armed conflict. A set of measures aimed at protecting the environment would have been incomplete if it had not included preventive measures, criteria for what constituted lawful behaviour by parties to an armed conflict and during occupation, and steps to be taken towards rehabilitating the environment and providing compensation for damage once the armed conflict ended.

74. With regard to the basic rules of international humanitarian law applicable to the topic at hand, his delegation was of the view that the prohibition of the use of methods and means of warfare that were intended to cause widespread, long-term and severe damage to the environment and thereby to prejudice the health and survival of the population, as provided in articles 35 and 55 of Additional Protocol I to the Geneva Conventions of 12 August 1949, had the broad support of States and had become a norm of customary international law. The support reflected the general ambition of the international community to increase the effectiveness of existing norms of international humanitarian law and to promote the protection of the environment. However, the prohibition was not absolute, as it did not apply to nuclear weapons, the possession and use of which were governed by a different international legal regime. It did apply to methods and means of warfare that concerned the environment. The destruction of parts of the environment that was not justified by military objectives, that was not proportionate to the threat or that was carried out without taking the necessary precautions, was a breach of international law. On the whole, draft principles 12 to 15 reflected that position.

75. With regard to the fairly complex international law rules governing situations of occupation, which were not always applied, Belarus was of the view that a State could not fully exercise its sovereign rights and comply with all its obligations to protect the environment while under occupation. Its population's role in that regard would also be severely limited. For that reason, shifting the obligation for protection of the environment to the occupying Power, which had de facto control over the territory, appeared to be the only possible and justifiable course of action.

76. With regard to the economic component of occupation and the exploitation of natural resources with the involvement of the occupying authorities and

business enterprises, which followed indirectly from the draft principles, Belarus agreed with the Commission that respect for environmental standards and prevention of pillaging of natural resources were principles that advanced environmental protection and the sustainable development of the territories in question. His delegation supported the inclusion of provisions in the draft principles concerning business enterprises operating in occupied territories and the need to establish their legal liability for harm caused to the environment.

77. The right of an occupying Power to administer natural resources of the occupied territory and the scope of that right continued to be a matter of debate in international law. Such a right could only be recognized more broadly beyond the context of international humanitarian law, including for the purposes of environmental protection, if due recognition was also given to the sovereignty of a State over its economic activity and natural resources and the right of peoples to self-determination. Such an understanding must underlie all discussions of the draft principles.

78. As a result of the growing competition among States and major transnational corporations over access to key natural resources, supply chain disruptions caused by armed conflict could give rise to global and regional economic challenges. The Commission should examine the degree to which international law rules allowed for an occupying Power to administer the natural resources of an occupied territory and use them for the benefit of the population of the occupied territory and other legal purposes.

79. The draft principles deserved the widest possible dissemination among subjects of international law and other international actors in order for them to serve as the basis for the development of international treaty rules. However, it was possible that some provisions of the draft principles would require in-depth review and discussion among State representatives and a practical analysis aimed at addressing potential disagreements.

80. With regard to "Other decisions and conclusions of the Commission", his delegation supported the inclusion of the topic "Settlement of international disputes to which international organizations are parties" in the Commission's current programme of work. A comprehensive examination of the topic that covered all types of public law and private law disputes involving international organizations would be of practical value, given the growing number and the expanding sphere of activity of international organizations. It would also be useful if the Commission could next undertake the codification of the rules of jurisdictional immunities of international organizations as a logical extension of its work on the aforementioned topic and the topic "Responsibility of international organizations".

81. His delegation welcomed the Commission's decision to include the topic "Non-legally binding international agreements" in its long-term programme of work. The Commission should give priority to the study of the nature of memorandums of understanding and other non-legally binding international agreements, the ways in which they could be distinguished from legally binding international agreements and other international instruments, and their effects on the formation of international law rules.

82. **Mr. Bandeira Galindo** (Brazil), said that his delegation hoped the Commission would continue to update its working methods, with a focus on its relationship with the Sixth Committee, since a fluid and constructive relationship between the two organs would foster the production of outputs that were relevant to the international community.

83. Speaking on the topic "Peremptory norms of general international law (*jus cogens*)", he said that the Commission's draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) provided a solid basis for identifying such norms and determining their legal consequences. *Jus cogens* norms rendered other conflicting norms non-applicable, regardless of whether they arose from treaties, customary international law, unilateral acts of States or decisions of international organizations. They protected essential values of the international community and their universal applicability gave rise to *erga omnes* obligations. The existence of such norms prevented the application of the persistent objector rule and the invocation of circumstances precluding wrongfulness. Furthermore, reservations to treaty provisions that reflected such a norm were without effect. As stated in draft conclusion 7 (International community of States as a whole), acceptance and recognition by a very large and representative majority of States was required for the identification of *jus cogens* norms. Accordingly, in order to be identified as having the status of *jus cogens*, a norm must be expressly recognized as such by all regional groups and by all the main legal systems and cultures of the world; mere silence could not be interpreted as acceptance or recognition of that status.

84. In draft conclusion 16 (Obligations created by resolutions, decisions or other acts of international organizations conflicting with a peremptory norm of general international law), his delegation would have

preferred to see an explicit reference to Security Council resolutions. However, it was pleased to note the references to such resolutions in the corresponding commentary. Owing to the nature of *jus cogens* norms in international law, Security Council resolutions must also be in accordance with them; the Security Council could not be considered above the law (*legibus solutus*) when it came to peremptory norms. With regard to draft conclusion 19 (Particular consequences of serious breaches of peremptory norms of general international law), the cooperation required to put an end to such violations should be effected through multilateral institutions and be focused on the peaceful – not coercive – settlement of disputes. Brazil was opposed to unilateral sanctions adopted on the pretext of reacting to serious violations of international law. Moreover, coercive or condemnatory multilateral measures that did not contribute to the peaceful settlement of disputes fell outside the scope of the obligations referred to in paragraph 1 of the draft conclusion. Measures adopted in response to a serious violation of *jus cogens* must not affect the populations of the responsible States and, in particular, must not undermine their human rights.

85. His delegation welcomed the adoption of draft conclusion 23 and the annex containing a non-exhaustive list of specific *jus cogens* norms. Because of its illustrative nature, the list did not rule out the existence of other *jus cogens* norms, such as the right of access to justice, which was recognized as a peremptory norm in the case law of the Inter-American Court of Human Rights. Nor did it preclude the future identification of other *jus cogens* norms, such as the obligation of nuclear disarmament. His delegation supported the Commission's recommendation in respect of the topic.

86. Turning to the topic "Protection of the environment in relation to armed conflicts", he said that his delegation's understanding was that the draft principles on protection of the environment in relation to armed conflicts related to the international law of armed conflicts (*jus in bello*) and were not directly applicable to the law on the use of force (*jus ad bellum*). His delegation welcomed the non-binding recommendations set forth in draft principle 4 (Designation of protected zones), draft principle 6 (Agreements concerning the presence of military forces) and draft principle 8 (Human displacement), the decision to address the Martens Clause in draft principle 12, and the provisions set out in draft principle 13 (General protection of the environment during armed conflicts) and draft principle 15 (Prohibition of reprisals). It was important to apply the principles of distinction, proportionality and precaution in respect of protection of the environment, in accordance with draft principle 14 (Application of the law of armed conflict to the environment). The prohibition of the looting of natural resources in draft principle 16 (Prohibition of pillage) was also a welcome provision. As the draft principles were non-binding in nature and should not create new norms of international law or change current international humanitarian law, the legally binding wording retained in some draft principles could reflect international obligations only insofar as the corresponding obligations were enshrined in binding instruments such as treaties and only in respect of States parties to those instruments. His delegation supported the Commission's recommendation in respect of the topic.

87. Regarding "Other decisions and conclusions of the Commission", his delegation welcomed the inclusion of the topic "Subsidiary means for the determination of rules of international law" in the Commission's current programme of work. It hoped that the Commission's work in that area would provide guidance for the interpretation of Article 38, paragraph 1 (d), of the Statute of the International Court of Justice and thus enhance the clarity and predictability of international law, while taking due regard of the contributions of all regions of the world to its development. His delegation also welcomed the decision to include the topic "Non-legally binding international agreements" in the Commission's long-term programme of work and would be in favour of moving the topic "Extraterritorial jurisdiction" to its current programme of work.

88. **Mr. Rakovec** (Slovenia), addressing the topic "Peremptory norms of general international law (*jus cogens*)", said that the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) and the commentaries thereto provided a comprehensive tool that would help to foster a broader, more coherent understanding of *jus cogens* norms and bring greater clarity to their identification and legal consequences. In that context, his delegation welcomed the additional clarifications introduced to draft conclusion 5 (Bases for peremptory norms of general international law (*jus cogens*)), draft conclusion 9 (Subsidiary means for the determination of the peremptory character of norms of general international law) and draft conclusion 14 (Rules of customary international law conflicting with a peremptory norm of general international law (*jus cogens*)), among others. It also supported the inclusion of the non-exhaustive list of *jus cogens* norms in an annex to the draft conclusions, noting that it was a record of norms that definitely qualified for inclusion therein and had routinely been identified as having

peremptory character, as indicated by the Commission in its commentary to draft conclusion 23.

89. All peremptory norms of general international law (*jus cogens*) produced obligations *erga omnes*. As stated in draft conclusion 2 (Nature of peremptory norms of general international law (*jus cogens*)), such norms reflected and protected fundamental values of the international community; they were hierarchically superior to other rules of international law and were universally applicable. That universal applicability derived from their acceptance and recognition by a very large and representative majority of States, as stated in draft conclusion 7 (International community of States as a whole).

90. There was a general obligation recognized under international law that States must cooperate to bring to an end any serious breach of an obligation arising under a peremptory norm of general international law, as set forth in draft conclusion 19. That draft conclusion and the articles on responsibility of States for internationally wrongful acts, building on the rules of customary international law, contained an obligation not to recognize as lawful a situation created by a breach of an obligation arising under such a norm, and consequently also an obligation not to render aid or assistance in the maintenance of such a situation. In the light of current world events, it was important to emphasize that the meaning and purpose of legal norms were realized only when they were fully operational and when subjects sought to comply with their provisions. His delegation supported the Commission's recommendation in respect of the topic.

91. With regard to the topic "Protection of the environment in relation to armed conflicts'', his delegation agreed with the Commission's approach regarding the temporal scope of the draft principles, namely, that they covered protection of the environment before, during and after armed conflicts, their applicability to both international and non-international armed conflicts, and the fact that they addressed States, international organizations and other actors involved in the protection of the environment. It welcomed the inclusion of draft principle 8 (Human displacement), given the growing number of displaced persons throughout the world. As a strong believer in the responsibility of States for internationally wrongful acts in armed conflicts that caused damage to the environment and in their obligation to make reparation for such damage, his delegation also welcomed the inclusion of draft principle 9 (State responsibility). In addition, it appreciated the corporate due diligence and liability provisions contained in draft principles 10 and 11, which were intended to deter business enterprises from preying on the local population and their natural resources during armed conflicts and to prevent the financing of conflict through the exploitation and trade of commodities.

92. The updated 2020 Guidelines on Protection of the Natural Environment in Armed Conflict issued by the International Committee of the Red Cross (ICRC) were an invaluable resource, which, together with the draft principles, helped to ensure that the issue was accorded greater attention by the international community. His country, for its part, contributed to the international effort by organizing high-level events and regional consultations on current issues of international humanitarian law, including the protection of the environment throughout the cycle of conflict.

93. With regard to "Other decisions and conclusions of the Commission", his delegation particularly welcomed the decisions to reconvene the Working Group on the long-term programme of work and to include the topic ''Non-legally binding international agreements'' in the Commission's long-term programme of work. The marked increase in State practice in that area was indicative of significant new developments that confirmed the need to address the topic. Universal criminal jurisdiction was another topic of increasing relevance that had a direct link to the rule of law and human rights and thus also merited the Commission's closer attention. His delegation also welcomed the decision to re-establish the Working Group on methods of work of the Commission; the recommendations of the Working Group would support the Commission's endeavours to address a variety of topics, ranging from those on which it had been working for some time to those that reflected new challenges in international law. Lastly, on the issue of gender parity in relation to the work of the Commission, his delegation saw potential for the Commission to make a positive contribution in that area and called for reflection on gender-related issues in relevant activities and communications.

94. **Mr. Košuth** (Slovakia), referring to the topic "Peremptory norms of general international law (*jus cogens*)", said that, while the value of the Commission's work in that area might be considered to lie primarily in the clarification that it provided regarding the structure of international law and the role of *jus cogens* within that structure, the significance of the topic had recently also been highlighted by the current Russian aggression against Ukraine, which provided a bitter reminder that the fundamental values enshrined in peremptory norms of general international law must stand firmly as pillars of the international rules-based order, respected by all nations wishing to live in peace and prosperity.

95. His delegation generally concurred with the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), considering them to provide a useful guide that would give States, courts, academics and other actors a better understanding of the process of identification of such norms. That said, while the draft conclusions clarified the legal effects associated with the binding nature of peremptory norms, the extent to which such norms were given effect lay with the international community of States and their future practice. His delegation wished to reiterate its support for the inclusion of the non-exhaustive list of peremptory norms contained in an annex to the draft conclusions, which added value to the Commission's output. As currently drafted, however, the list could create ambiguity; for instance, the reference to "basic rules of humanitarian law" was vague, and the omission of the crime of piracy might raise some questions.

96. Turning to the topic "Protection of the environment in relation to armed conflicts", he said that the draft principles on protection of the environment in relation to armed conflicts would provide valuable guidance to States and other actors before, during and after armed conflicts. Armed conflicts had negative impacts for the environment and natural resources that were often long-lasting and sometimes irreparable. His delegation therefore appreciated the fact that the set of draft principles comprehensively systemized the applicable rules and took a cross-cutting approach that incorporated elements drawn from various fields, including international humanitarian law, international human rights law and environmental law.

97. Concerning "Other decisions and conclusions of the Commission", his delegation welcomed the decision to include the topic "Settlement of international disputes to which international organizations are parties" in the Commission's current programme of work, especially in view of the increasing attention being accorded to dispute settlement in recent decades. It was also pleased to note the inclusion of the topic "Subsidiary means for the determination of rules of international law" in the current programme of work, and the decision to add the topic "Non-legally binding international agreements" to the long-term programme of work.

98. **Ms. Veski** (Estonia), speaking on the topic "Peremptory norms of general international law (*jus cogens*)", said that her delegation acknowledged the difficulties associated with the identification of *jus cogens* norms and the need for clarity on the concept. It agreed with most of the draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens) adopted by the Commission on second reading and appreciated the efforts made to harmonize the wording used therein with the wording of the Vienna Convention on the Law of Treaties.

99. As her delegation had repeatedly called for an analysis of how the concept of *jus cogens* affected the international organizations that might create obligations for States, it was pleased to note that the consequences of *jus cogens* norms for obligations created by acts of international organizations were addressed in draft conclusion 16 (Obligations created by resolutions, decisions or other acts of international organizations conflicting with a peremptory norm of general international law) and the commentary thereto. However, the inclusion of "resolutions adopted by an international organization" in the list of forms of evidence of acceptance and recognition of *jus cogens* norms set forth in paragraph 2 of draft conclusion 8 implied that international organizations could autonomously decide whether a norm was accepted and recognized as having *jus cogens* status. Given that the underlying idea was that "the international community of States'' accepted and recognized norms as having that character, it should be reflected in the draft conclusion that what mattered was the conduct of States in connection with the resolutions adopted by an international organization.

100. Her delegation supported the inclusion of the non-exhaustive list of *jus cogens* norms in the annex to the draft conclusions, as it brought clarity and practical value. However, a thorough analysis of each potential example of *jus cogens* should have been conducted prior to its inclusion in the list in order to ensure that its identification was based on a clear and convincing consensus within the international community of States. While some of the examples on the proposed list, such as the prohibition of aggression and the prohibition of torture, were obviously *jus cogens* norms, the *jus cogens* status of others was disputable. In particular, there was no explanation as to which "basic rules of international humanitarian law" qualified as *jus cogens* norms, and, in the absence of a common understanding of the nature and scope of "the right of self-determination", which was the subject of ongoing debate, it was premature to qualify that right as a *jus cogens* norm. Her delegation did not share the view that the inclusion of a non-exhaustive list created a barrier to the emergence of new *jus cogens* norms in the future.

101. Although the draft conclusions were intended to provide guidance for determining the existence of *jus cogens* norms and their legal consequences, some of them were framed in binding terms, using the term "shall", for example, which was more appropriate for

draft articles. In addition, the draft conclusions and the commentaries thereto were based mainly on academic writings and judicial decisions and made only limited references to State practice. Given that a requirement for the identification of *jus cogens* norms was that they should be accepted and recognized by the international community of States, it was vital to identify relevant State practice and to rely on it as much as possible. More extensive references to State practice would therefore have been useful. Nonetheless, overall, her delegation appreciated and supported the Commission's significant efforts to analyse the concept of *jus cogens* norms and develop coherent conclusions regarding their status and effects.

102. Turning to the topic "Protection of the environment in relation to armed conflicts", she said her delegation agreed that more attention should be paid to enhancing such protection in order to prevent, mitigate and remediate harm to the environment. It also agreed that the draft principles on protection of the environment in relation to armed conflicts should address protection of the environment before, during and after armed conflicts. It was not sufficient to take precautionary measures only during armed conflicts. States needed to prepare themselves before conflict occurred and must be ready to deal with the negative consequences to the environment once hostilities had ended.

103. Since the draft principles contained provisions of differing normative value, it was essential that the wording of each reflected its legal nature. The understanding of her delegation was that draft principles in which "shall" or "must" was the operative verb set forth legal obligations while draft principles containing "should" as the operative verb constituted recommendations for the progressive development of international law. However, in the case of some draft principles containing the verb "shall", such as draft principle 7 (Peace operations), the existence of a corresponding legal obligation under treaty or customary international law was doubtful. Thus, while the purpose of the draft principles was commendable, their legal nature might be reconsidered.

104. Her delegation was pleased that the Commission's aim in preparing the draft principles was not to change but rather to supplement the existing law of armed conflict. It saw no harm in the Commission's decision to use the term "environment" instead of the term "natural environment" found in the law of armed conflict. The Commission's decision that it was generally unnecessary to distinguish between international and non-international armed conflicts was also, for the most part, appropriate. It was important to bear in mind, however, that the treaty law applicable in non-international armed conflicts did not explicitly address protection of the environment, and that there were divergent views among States as to whether, and to what extent, the issue was addressed under customary international law. Accordingly, her delegation suggested a cautious approach, with the commentaries being expanded to include supporting State practice in non-international armed conflicts. Lastly, her delegation was pleased that the Commission had chosen to address the role of relevant international organizations and other actors as well as the role of States in the protection of the environment.

105. With regard to "Other decisions and conclusions of the Commission", her delegation particularly welcomed the inclusion of the topics "Prevention and repression of piracy and armed robbery at sea" and "Subsidiary means for the determination of rules of international law" in the Commission's current programme of work. The two topics would be useful both for practitioners and for domestic and international courts. Her delegation also commended the recommendation for the Commission to include in its long-term programme of work the topic "Non-legally binding international agreements", which would be of particular interest for practitioners.

106. **Mr. Khan** (Pakistan) said that, despite its considerable past work, the Commission was facing fresh challenges in its selection of topics, interaction with States, working methods and composition. As a subsidiary body of the General Assembly, the Commission should bear in mind the goal of serving Member States when selecting topics and should prioritize legal questions to which States needed urgent answers. Its working methods should be based on well-established State practice and should strike a balance between codification and progressive development. When the Commission addressed important but sensitive issues on which general consensus had yet to be achieved, bringing coherence and clarity to *lex lata* should take precedence. With regard to the Commission's composition, a diverse membership based on equitable geographical representation was needed and the Special Rapporteurs were central to the Commission's work. Yet only 5 of the 62 Special Rapporteurs appointed in the seven decades since the Commission's establishment had been Asian and only 7 had been African. The vast majority had been from Western countries and the global North. The Commission's purpose, on establishment, had been to transform Eurocentric international law into a more equitable system that was also fair to countries of the global South, but, unfortunately, that transformation had yet to come about. To make the Commission more

representative and fit for purpose, those deficiencies must be addressed.

107. Speaking on the topic "Peremptory norms of general international law (*jus cogens*)", he said that his delegation concurred with the methodology applied in the formulation of the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), which focused on the structural aspects of such norms and was consistent with the approach applied in the elaboration of the Vienna Convention on the Law of Treaties and in the Commission's work on other relevant topics. It agreed with the key elements of the definition of *jus cogens* norms contained in draft conclusion 2 (Nature of peremptory norms of general international law), which adhered closely to the wording of article 53 of the Vienna Convention. It also concurred with the characterization of peremptory norms of general international law as reflecting and protecting fundamental values of the international community, which were hierarchically superior to other rules and universally applicable, as set forth in draft conclusion 3 (Definition of a peremptory norm of general international law (*jus cogens*)). Those two draft conclusions were closely interconnected and must be read together.

108. His delegation appreciated the inclusion of the right of self-determination in the non-exhaustive list of peremptory norms contained in the annex to the draft conclusions. Unfortunately, since the events of 11 September 2001, and in the absence of a sufficiently precise and legally grounded definition of terrorism, several States had abusively invoked the counter-terrorism resolutions of the Security Council as a means to criminalize legitimate activities under international law such as the exercise of the right to self-determination, which was expressly enshrined in paragraph 1 of General Assembly resolution 2649 (XXV). Despite the *ergo omnes* obligation associated with the right to self-determination, the misuse of counter-terrorism laws under the guise of giving effect to Security Council resolutions had become widespread practice in many situations of foreign occupation, where discretionary legal instruments were routinely used to crush legitimate civil and political rights through draconian curbs on fundamental freedoms, including the imposition of digital and physical lockdowns and indefinite curfews, in the name of countering terrorism.

109. As the scope of the human rights obligations of the Security Council had broadened in parallel with the expansion in the regulatory capacity of its actions in the field of counter-terrorism, it was important to recall that the principles of respect for and observance of human rights enshrined in Article 55 of the Charter of the United Nations were binding not only for Member States but also for all United Nations institutions and entities created and regulated under the Charter, including the Security Council. As had been demonstrated by the high-profile case *Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities*, in which the European Court of Justice had identified a potential clash between a Security Council resolution and fundamental rights that the Court had recognized as having the status of *jus cogens* norms, conflicts between Security Council resolutions and *jus cogens* norms were possible and could not be equated with a conflict between such a norm and the Charter of the United Nations itself. The Commission rightly recognized, in draft conclusion 16 (Obligations created by resolutions, decisions or other acts of international organizations conflicting with a peremptory norm of general international law), that a resolution, decision or other act of an international organization that would otherwise have binding effect did not create obligations under international law if and to the extent that they conflicted with a peremptory norm, and that provision clearly encompassed Security Council resolutions. Accordingly, his delegation looked to the Security Council to ensure that its counter-terrorism resolutions were not being abusively invoked by Member States as a means to curb fundamental freedoms, particularly those of populations already reeling under the effects of foreign occupation or domination. It was essential that those people continued to enjoy the protection guaranteed by peremptory norms of international law.

110. **Ms. Orosan** (Romania) said that her delegation urged the Commission to resume its traditional exchanges of information with committees and commissions within regional organizations competent in matters of public international law. That tradition appeared to have been affected for an unduly long period of time by the recent coronavirus disease (COVID-19) pandemic. In particular, her delegation strongly encouraged the Commission to resume the interactive dialogue that it had traditionally maintained with the Committee of Legal Advisers on Public International Law of the Council of Europe (CAHDI). Such dialogue had proven over the years to be a very effective means of connecting the Commission's activities with the work on public international law undertaken by CAHDI.

111. Referring to "Other decisions and conclusions of the Commission", she said that her delegation appreciated the decision to include the topics "Settlement of international disputes to which

international organizations are parties” and “Prevention and repression of piracy and armed robbery at sea” in the Commission’s current programme of work, having consistently called for the consideration of those topics, in view of their relevance for inter-State relations and the functioning of international organizations and their pertinence to the Commission’s mandate. It also welcomed the inclusion of the topic “Subsidiary means for the determination of rules of international law”.

112. Her delegation was pleased to see the addition of the topic “Non-legally binding international agreements” to the Commission’s long-term programme of work. CAHDI was also considering a study of such agreements and had already gathered information about State practice in that area that could serve as a guide for its further consideration and might be of assistance to the work of the Commission, should it decide to include the topic in its current programme of work. That confluence of interests confirmed once again the interconnection between the work of the Commission and that of regional organizations and the value of dialogue, particularly with a view to preventing a fragmented approach. Her delegation also wished to reiterate its call for the topic “Universal criminal jurisdiction” to be prioritized and placed on the Commission’s current programme of work. The Commission’s expertise would assist the Sixth Committee in its legal assessment of the scope and application of the principle of universal jurisdiction and would give a more solid perspective to the outcome of its deliberations.

113. Turning to the topic “Peremptory norms of general international law (*jus cogens*)”, she said that her delegation was of the view that the draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) provided a useful tool for the identification of *jus cogens* norms, which remained a difficult endeavour. Despite being somewhat theoretical, they offered valuable methodological assistance for States seeking to determine whether a certain norm had acquired *jus cogens* status. A determination of peremptory status had important legal consequences, and her delegation was pleased to note that, in the draft conclusions, the Commission endeavoured to address in a comprehensive manner all legal situations that might arise as a result of such a determination. The Commission’s efforts to ensure that the draft conclusions were consistent with the Vienna Convention on the Law of Treaties and with the Commission’s previous work, notably the articles on responsibility of States for internationally wrongful acts, were also to be commended.

114. Her delegation had continuing reservations about some of the draft conclusions. It questioned the fact that general principles of law were cited as a basis for peremptory norms of general international law in draft conclusion 5. It also had doubts about the inclusion of the procedure set forth in draft conclusion 21 (Recommended procedure). Despite assurances in the commentary to the draft conclusion that the procedure did not constitute the basis for the jurisdiction of the International Court of Justice, the draft conclusion was formulated in a manner that did not definitively exclude such an assumption. Moreover, dispute resolution provisions did not operate as a matter of customary law, as the Commission itself had recognized in the commentary to the draft conclusion. While her delegation was not opposed to the inclusion of the indicative list of *jus cogens* norms in the annex to the draft conclusions, it regretted the lack of ambition shown by the Commission in its selection of examples. The Commission might have endeavoured at least to include all the norms that it had previously identified as having peremptory status. Such an effort would have helped to elucidate the precise methodology previously used to make such determinations.

115. Referring to the topic “Protection of the environment in relation to armed conflicts”, she said that the adoption of the draft principles on protection of the environment in relation to armed conflicts could not have been timelier in view of the environmental costs of conflict becoming evident around the world. In Europe, for example, the costs of the aggression of the Russian Federation against Ukraine, including for the environment, were all too apparent. For Romania, as a State with a Black Sea coastline, the long-term and severe environmental damage to the Black Sea Basin caused by Russian targeting of heavy industry and energy installations was a source of particular concern. Thus, the Commission’s efforts to systematize law in the field of environmental protection in the wider context of armed conflict, from pre-conflict through to post-conflict situations, broadly reflected the realities of modern warfare and served the current interests of States. Approaching the topic from a broader perspective had shifted the focus beyond the traditional application of international humanitarian law, which applied as *lex specialis* during armed conflict, by the inclusion of various legal developments related to the protection of the environment that had occurred in recent decades.

116. While her delegation generally agreed with the Commission’s approach to the topic, it should be established more clearly in the commentaries which draft principles reflected established international law

and which were intended to contribute to its progressive development. That distinction should also be reflected in the formulation of the draft principles themselves. Greater precision in the formulation of those draft principles that were intended to reflect customary international law would have served to prevent possible misinterpretations. Some draft principles, such as draft principle 9 (State responsibility), could be misleading; her delegation's understanding of the scope of that draft principle was that it applied in the context of violations of a norm of international humanitarian law but not in situations where the damage to the environment occurred without any violation of a legal norm applicable in situations of armed conflicts. In the case of other draft principles, including draft principle 7 (Peace operations) and draft principle 23 (Sharing and granting access to information), the precise nature of the rule of customary international law was not settled, and both the draft principle and the corresponding commentary needed to reflect that fact more clearly. The draft principles were intended to apply to both national and international armed conflicts; however, the inclusion of provisions that specifically addressed non-international armed conflict would have been beneficial. Provisions that aided the identification of situations entailing the responsibility and accountability of non-State armed groups in respect of damage to the environment would also have been useful.

117. **Mr. Smolek** (Czechia), addressing the topic "Peremptory norms of general international law (*jus cogens*)", said that his delegation concurred with the methodology adopted by the Commission for its draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), which focused on the structural aspects of peremptory norms and built upon the approach to such norms applied in the Vienna Convention on the Law of Treaties and the Commission's work on other relevant topics. It agreed with the Commission's definition of peremptory norms of general international law and its characterization of such norms as universally applicable and hierarchically superior to other rules of international law; those characteristics stemmed from the fact that peremptory norms reflected and protected fundamental values of the international community. It also concurred with the Commission's conclusions regarding the legal consequences of *jus cogens* norms in respect of other rules of international law. It supported the two-criteria requirement for the identification of such norms and the emphasis placed on evidence of acceptance and recognition, underscoring the role of States.

118. His delegation appreciated the Special Rapporteur's efforts to address the concerns that his Government had raised previously in connection with draft conclusion 21 (Recommended procedure). It agreed that the procedure envisaged would be relevant only for the purpose of giving effect to a claim for the invalidation of a rule of international law at the international level. Despite some remaining doubts regarding the practical applicability of certain aspects of the suggested procedure, his delegation was pleased that the Commission had made clear in the draft conclusion, as reformulated, that its provisions represented recommended practice only and were not binding.

119. His delegation was still not convinced that the inclusion of a non-exhaustive list of peremptory norms was appropriate. It was very useful that the Commission, in its commentary to draft conclusion 23 (Non-exhaustive list) had clearly summarized references to peremptory norms of general international law drawn from its work on other topics. His delegation also agreed that the list was without prejudice to other norms that the Commission had referred to as having peremptory character and to any other norms having *jus cogens* status to which it had not referred previously. However, the manner in which the peremptory norms were described in the list in some cases did not reflect differing formulations found in the Commission's previous work and in some cases the scope of the description was not entirely clear. For example, in the paragraph of the commentary concerning the prohibition of aggression, the Commission referred to its earlier conclusion, contained in draft article 50 of the draft articles on the law of treaties, that the prohibition of the use of force constituted a "conspicuous example of a rule in international law having the character of *jus cogens*". Accordingly, his delegation suggested that the list of peremptory norms identified by the Commission in its previous work on other topics be included only in the commentary to draft conclusion 23.

120. Turning to the topic "Protection of the environment in relation to armed conflicts", he said that his delegation recognized the increasing importance of environmental protection at all levels. Armed conflict represented a major threat to the environment owing to the extensive degradation and destruction it caused. It was thus necessary to consolidate and strengthen the legal framework governing the protection of the environment also in relation to armed conflicts. In that context, the draft principles on protection of the environment in relation to armed conflicts constituted a very important contribution to contemporary international law and its possible progressive development, as well as a substantive complement to other initiatives in the area such as the updated 2020 ICRC Guidelines on the Protection of the Natural

Environment in Armed Conflict. His delegation hoped that those initiatives would together lead to a better implementation of existing rules and, where appropriate, to the development of new rules that enhanced the protection of the environment in relation to armed conflicts.

121. His delegation appreciated the helpful explanations provided by the Special Rapporteur in response to the suggestions and concerns raised by Czechia in respect of the draft principles on the protection of the environment in relation to armed conflicts adopted on first reading. The text adopted on second reading contained several amendments that improved the draft principles overall. For example, certain limitations on the use of methods and means of warfare were now expressly mentioned in draft principle 13 (General protection of the environment during armed conflict), and the applicability of certain other draft principles had been extended to include subjects other than States. However, some of the concerns his delegation had raised previously had not been allayed. In some draft principles, there was still no clear dividing line between provisions that were accepted rules of international law and provisions intended to contribute to its progressive development. In addition, it was not always clear which conclusions were also applicable in situations of non-international armed conflict. Furthermore, when reading the draft principles, it was necessary to bear in mind at all times that the legal obligations relating to protection of the environment had to be interpreted and understood in the context of all other relevant rules applicable in situations of armed conflicts.

122. Regarding "Other decisions and conclusions of the Commission", his delegation welcomed the addition of the topic "Settlement of international disputes to which international organizations are parties" to the Commission's current programme of work and was pleased to note that the Commission intended to include certain disputes of a private law character to which international organizations were parties within the scope of that work, which should be beneficial for the practice of both States and international organizations. It also noted with interest the inclusion of the topics "Prevention and repression of piracy and armed robbery at sea" and "Subsidiary means for the determination of rules of international law".

123. His delegation likewise welcomed the inclusion of the topic "Non-legally binding international agreements" in the Commission's long-term programme of work. The increasing practical relevance of such instruments was confirmed by the fact that a number of other international expert bodies were also examining the subject. Lastly, his delegation wished to repeat its call for the topic "Universal criminal jurisdiction" to be moved to the Commission's current programme of work. That area of international law was currently the focus of intense discussions, was relevant for State practice and met the criteria for the selection of topics to be addressed by the Commission.

124. **Ms. Solano Ramirez** (Colombia), referring to "Other decisions and conclusions of the Commission", said that her delegation welcomed the inclusion of the topics "Settlement of international disputes involving international organizations", "Prevention and repression of piracy and armed robbery at sea", and "Subsidiary means for the determination of rules of international law" in the Commission's current programme of work. It was also pleased to see the topic "Non-legally binding international agreements" included in the Commission's long-term programme of work. Her Government had considerable experience in that area that it stood ready to share at the appropriate time.

125. Turning to the topic "Peremptory norms of general international law (*jus cogens*)", she said that the Commission's draft conclusions on the identification and legal consequences of peremptory norms of general international law (*jus cogens*) were an important contribution to the crystallization and systematization of international law. They shed light on one of the main problems associated with *jus cogens* norms, namely, the indeterminacy of their content attributable to the lack of clear criteria for their identification. For her delegation, the draft conclusions constituted a point of departure for determining the existence of *jus cogens* norms; it saw them not as a constraining framework but as a tool that would facilitate the process of identification. In that context, her delegation welcomed the inclusion of the non-exhaustive list of peremptory norms as an annex to the draft conclusions.

126. Some of the concerns previously raised by her delegation had not been taken into account. In particular, in respect of draft conclusion 8 (Evidence of acceptance and recognition), and more specifically the last two forms of evidence listed in paragraph 2, namely "resolutions adopted by an international organization or at an intergovernmental conference", her delegation wished to reiterate that it would have been useful for the Commission to specify the international organizations and intergovernmental conferences whose resolutions could serve as evidence of acceptance and recognition. It would also have been helpful to clarify whether any and all decisions of an international organization, including regional organizations and organizations in which only a small number of States participated, could meet the standard of evidence required. Although some of the points previously raised by her delegation had

been addressed in the commentaries, addressing them in the draft conclusions themselves would have been beneficial and would have helped to render the text as clear as possible. Nonetheless, despite those reservations, her delegation supported the adoption of the draft conclusions.

127. With regard to the topic "Protection of the environment in relation to armed conflicts", her delegation believed that various systems of international law could be applicable in that area; it was aware that the law of armed conflict, where applicable, was *lex specialis* but that other rules of international law remained applicable provided that they did not enter into conflict with the law of armed conflict. The draft principles contained provisions of differing normative value, including some that reflected customary international law and others that were intended as recommendations to promote the progressive development of international law; her delegation understood, however, that they would not under any circumstances generate new legal obligations for States.

128. Her delegation shared the view of those States that believed it would have been extremely useful to establish a clear differentiation between international and non-international armed conflicts in terms of the applicability of the principles. Furthermore, greater attention might have been accorded to the case law and opinions of courts other than the International Court of Justice, including regional courts such as the Inter-American Court of Human Rights, particularly in relation to draft principle 11 (Liability of business enterprises), draft principle 13 (General protection of the environment during armed conflict) and draft principle 21 (Prevention of transboundary harm). Nonetheless, the draft principles provided a good point of departure for States and for legal professionals working in the area. It was her delegation's view that statements delivered in the Sixth Committee influenced the manner in which States understood the draft principles and how they should be applied, bearing in mind their legal nature and, specifically, their status as guidance and not a source of new obligations.

129. With regard to the Commission's working methods, her delegation reiterated its call for States to work to ensure closer cooperation between the Sixth Committee and the Commission. To that end, it encouraged the Commission to continue to take account of all concerns raised by States. It also urged the Committee to explore mechanisms that might enable States to review the Commission's outputs in a more systematized manner that favoured predictability and allowed more efficient use of the resources, knowledge and expertise of the two bodies.

130. **Mr. Mora Fonseca** (Cuba) said that the contribution of all States to the invaluable work of the Commission was vitally important in fostering progress in the codification and progressive development of international law. With regard to the topic "Protection of the environment in relation to armed conflicts", his delegation wished to emphasize the serious threat to peace, international security, the fragile environmental balance of the planet and sustainable development posed by the continuing enhancement of weapons of mass destruction and the latent possibility of their use. Against that backdrop, it would be very useful for the Commission to address the harmful effects for the environment specifically associated with the development, storage and use of nuclear weapons. His delegation also highlighted the importance of having a regime of responsibility that would address reparation for harm, reconstruction, responsibility for the wrongful act and compensation for the damage caused to the environment. All States had a responsibility to establish policies and norms for protecting the environment in the event of armed conflict. His delegation wished to reiterate its satisfaction with the draft principles and their contribution to the codification of international law in that area.

131. Referring to the topic "Peremptory norms of general international law (*jus cogens*)", he said that his delegation supported the Commission's work in that area. It was important to adopt interpretative guidelines for the identification of *jus cogens* norms as respect for such norms was central to establishing the rule of law at the international level. State practice must be a key consideration in the Commission's work in that area.

The meeting rose at 6 p.m.