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(translation)

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**At the Sixth Committee of the 74th Session of
the UN General Assembly**

On Agenda Item 79

**Report of the International Law Commission
on the work of its 71st session**

Cluster I: Chapters I, II, III, IV, V and XI

New York, 28 October 2019

Mr Chairman,

As this is the first time I take the floor in the Six Committee at the current session of the General Assembly, please allow me to congratulate you on your election as Chairman. I am confident that under your able leadership, this session will come to a successful conclusion. I would also like to thank the Chairman of the International Law Commission for introducing the report on the work of the Commission's seventy-first session and for providing a very good basis for the discussions to be held in this Committee.

At its seventy-first session, the Commission has achieved progress on quite a few fronts. The Commission adopted, on second reading, the draft articles on "Prevention and punishment of crimes against humanity" and the commentaries thereto. The Commission also adopted, on first reading, the draft principles on "Protection of the environment in relation to armed conflicts" and the draft conclusions on "Peremptory norms of general international law (*jus cogens*)", together with respective commentaries thereto. In addition, the Commission initiated its consideration of the topic "General principles of law", and decided to include the topic "Sea-level rise in relation to international law" in its programme of work. The Chinese delegation applauds the active work of the Commission.

Mr. Chairman,

I would like to present the views of the Chinese delegation on the relevant topics as contained in the report.

With respect to "Prevention and punishment of crimes against humanity", the Commission adopted, on second reading, the draft articles on this topic at its seventy-first session, and recommended the elaboration of a convention by the General Assembly on the basis of the draft articles. China always attaches high importance to the prevention and punishment of crimes against humanity as well as the fight against impunity. The elaboration of a convention, however, will involve debates over complicated issues, such as the definition and scope of crimes against humanity, and therefore must be based on the actual will of and consensus among States. At present, States are far from reaching consensus on the need for a convention. Moreover, the

discussions so far at this Committee also show that many Member States still see major shortcomings in certain key provisions of the draft articles as they currently stand. For instance, many provisions derive from analogous texts found in existing international conventions, are not grounded in empirical analysis of widespread international practice, and rely primarily on the practice of international criminal tribunals that do not enjoy universality. This delegation is of the view that the time is not yet ripe for the elaboration of a convention.

With respect to "**Peremptory norms of general international law (*jus cogens*)**", the Commission adopted, on first reading, the entire set of 23 draft conclusions and commentaries thereto on this topic, setting forth, *inter alia*, the concept and nature of *jus cogens*, the criteria for its identification as well as its legal consequences, which may serve as useful references for States and international institutions.

The Chinese delegation has noted that due to time constraints, the Commission was unable to engage in in-depth discussions on many issues. Given the particular importance of *jus cogens* vis-à-vis other norms of international law, we hope that the Commission will further refine the draft conclusions and commentaries thereto on the basis of the statements delivered at the Sixth Committee as well as other relevant comments, in order to fully reflect various concerns. The Chinese delegation would like to underscore three points in this regard:

First of all, the criteria for the identification of *jus cogens* should be strictly implemented. The two criteria adopted by the Commission on first reading, namely a norm in question should be "a norm of general international law" and "accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted", are largely in line with the consensus of the international community. The Commission itself should strictly abide by the said criteria in its codification activities. We also hope that detailed elaboration of those criteria will be included in future iterations of the commentaries to the draft conclusions so as to help States and international institutions strictly implement those criteria in identifying peremptory norms and heighten the authority and serious nature of *jus cogens* rules.

Secondly, the draft conclusions should avoid treading on the relationship between resolutions of the Security Council and *jus cogens*. The Chinese delegation has noted that according to draft conclusion 16, "A resolution, decision or other act of an international organization that would otherwise have binding effect does not create obligations" if and to the extent that they conflict with *jus cogens*. It is further argued in the commentaries concerned that such binding resolutions of international organizations include the resolutions of the Security Council, effectively negating, albeit in an implicit manner, the effect of Security Council resolutions that contradict *jus cogens*. Admittedly, the commentaries also suggest that resolutions of the Security Council require additional consideration since, pursuant to Article 103 of the Charter of the United Nations, obligations under the Charter prevail over other rules of international law. Nevertheless, this delegation finds it inappropriate to make an explicit reference to the relationship between Security Council resolutions and *jus cogens* in the commentaries. The Security Council is the core of the collective security mechanism of the United Nations. Resolutions of the Security Council, whose authority flows from the provisions of the UN Charter, must meet stringent procedural requirements and comply with the purposes and principles of the Charter. It is simply inconceivable that such resolutions will conflict with *jus cogens*. In addition, given that the content and scope of *jus cogens* remain highly unsettled, any attempt to judge the validity of Security Council resolutions against *jus cogens* will very likely lead to the use of *jus cogens* as a pretext to evade the obligation to implement those resolutions or a challenge to their authority, thereby undermining the collective security mechanism of the United Nations. The Chinese delegation therefore suggests that languages relating to Security Council resolutions be removed from the commentaries to the draft conclusions.

Thirdly, the draft conclusions should not include a non-exhaustive list of peremptory norms. The current draft includes in its annex a list of eight peremptory norms, namely the prohibition of aggression, the prohibition of genocide, the prohibition of crimes against humanity, the basic rules of international humanitarian law, the prohibition of racial discrimination and apartheid, the prohibition of slavery, the prohibition of torture, and the right of self-determination. This delegation finds such a list to be highly

problematic, as the Commission failed to provide convincing arguments for the inclusion of those norms in accordance with its own criteria for the identification of *jus cogens* as contained in the draft conclusions. In fact, the substance of some norms remains extremely vague. For instance, neither the draft conclusions nor their commentaries offer any illumination as to what rules constitute "the basic rules of international humanitarian law". The list also falls short of explaining the rationale for highlighting the foregoing eight norms while leaving out other norms governing international relations, such as the principle of sovereign equality. Furthermore, the inclusion of such a list will result in a change in the nature of this project, deviating from the codification of secondary rules regarding the criteria for the identification of peremptory norms and their legal consequences, and moving toward the development of primary rules that determine which norms constitute *jus cogens*. Such an approach will provoke even greater divergences of views and is at variance with the original intention of this topic, which is to elaborate on the criteria for the identification of *jus cogens*. The Chinese delegation would like to suggest the deletion of the list from the draft conclusions.

With respect to the two topics that have been included in the Commission's long-term programme of work, the Chinese delegation would like to make the following brief comments:

With respect to "**Prevention and repression of piracy and armed robbery at sea**", the Chinese Government pays high attention to this issue, and appreciates the inclusion of this topic in the Commission's long-term programme of work. China carries out escort operations at sea off the coast of Somalia in accordance with relevant Security Council resolutions, and actively participates in the international cooperation to combat piracy in the Gulf of Guinea. China fully appreciates the necessity to promote the implementation of existing treaties in this area, coordinate the operations by various States and increase the anti-piracy capacity of relevant countries.

Prevention and repression of piracy is a long-established topic in the realm of international law of the sea, with abundant international treaties and State practice. The legal framework and rules in this area are underpinned by such international instruments as the United Nations Convention on the Law of

the Sea and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, as well as regional treaties such as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia. In addition, the United Nations Security Council has adopted a series of resolutions under Chapter VII of the UN Charter to address piracy off the coast of Somalia and in the Gulf of Guinea. We hope that the Commission will take into full consideration the development of law and practice in this area, avoid altering the existing international legal framework or rules, base its work on the respect for national legal systems, and seek practical and feasible measures to promote international cooperation and coordination in piracy-related criminalization, extradition and mutual legal assistance, in order to step up the efforts in preventing and combating piracy.

With respect to **“Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law”**, the international community is yet to reach an agreement on the types of acts that qualify as gross violations of international human rights law and serious violations of international humanitarian law. In light of this, the selection of this topic as one of the Commission's long-term projects seems premature, and is not sufficiently supported by international and State practice.

Moreover, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly on December 16, 2005, have already provided States with necessary guidance on how to deal with this issue and can meet their needs. The focus of the international community at present should be ensuring the implementation of the said Guidelines, rather than formulating new rules in this regard.

Thank you, Mr. Chairman.