



PERMANENT MISSION OF CUBA TO THE UNITED NATIONS
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**STATEMENT BY THE CUBAN DELEGATION UNDER AGENDA ITEM 75
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF
ITS 71ST SESSION "Protection of the environment in relation to armed
conflicts" and "immunity of of State officials from foreign criminal
jurisdiction" CLUSTER II**

New York, 28 October – 6 November 2019

Mr. Chairman,

On the topic "Protection of the environment in relation to armed conflicts", Cuba takes note of the work recorded and of the draft principles on which the Commission has been working.

In this regard, my delegation reiterates its satisfaction with the study and future codification of the topic. It is important for international law that the principles regarding this issue be combined without weighing one against the other, which could give more organizational structure to the treatment and study conducted on this topic.

Cuba considers it useful to address the impact of all types of weapons on the environment, particularly the effects caused by the development, stockpiling and use of nuclear weapons. We must work for the international recognition of the incompatibility of nuclear weapons with International Humanitarian Law, from an environmental perspective. Article 35(3) of Additional Protocol I to the Geneva Conventions (1977) *prohibits the use of methods or means of warfare which have been intended to cause, or may be expected to cause, widespread, long-lasting and severe damage to the natural environment.*

In the context of environmental care in relation to armed conflicts, another important element to highlight is the relevance of a liability regime that encompasses compensation for damage, reconstruction and responsibility for the international wrongful act, to those subjects of international law that use force and in particular establish an armed conflict that causes damage to the environment, which should be reflected as a principle.

Mr. Chairman,

Cuba acknowledges the International Law Commission for its work on this topic and wishes to reiterate its support for any initiative aimed at clarifying the contents and preserving environmental care particularly, with a view to achieving sustainable development at global level.

In the same manner, Cuba considers that the institutions dedicated to the defense in each of the states are the ones responsible for establishing policies and norms for environmental care in the face of a possible armed conflict. In Cuba we have strategies designed by our institutions and legal norms to protect, re-establish and increase the quality of environmental care in a sustainable manner, both in conflict situations and in exceptional situations, an example of which is Law No. 81 on the Environment, Law No. 75 on the National Defense, which lays down in Articles 34 and 35, the responsibility to protect the environment.

Mr. Chairman,

Cuba considers that the Cuban norms ensure the fulfillment of a sustainable development model; in particular they reflect the unrestricted will of our country to prevent and continuously mitigate the negative environmental impacts. The most eloquent example is the Task "Life" that our government has carried out in order to mitigate the impact of climate change. However, in connection with armed conflicts, Cuba wishes to consider that Peace and respect for the principles of International Law is the best remedy not to damage the Environment with armed conflicts.

In this regard, my delegation believes that the identification and study of principles in this matter, based on the regulatory dispersion in the existing international environmental law, should take into account not only the practice of states and the *opinio iuris sive necessitatis*, but also the regulations of international institutions and the main treaties in terms of environmental care.

Mr. Chairman,

Cuba has, for many years, expressed its unrestricted respect for international law and its support for the work of the International Law Commission. To conclude, we wish to appeal to the member States so that the work of this respectable Commission, which has been fruitful and significant, do not remain sterile and bear its well-earned fruits with the birth of new international conventions that would undoubtedly contribute in a positive manner to the organization of the current international relations, to the fulfilment of international obligations and to the respect among all the member States of this organization.

Mr. Chairman,

The issue of Immunity of State Officials from Foreign Criminal Jurisdiction is of utmost importance for the continuity of the work of progressive codification of International Law.

In this regard, we thank the Special Rapporteur, Ms. Concepción Escobar Hernández, for the enormous amount of work carried out in with respect to the seventh report, which, together with the sixth report, provides an extensive and detailed examination and analysis of State practice, jurisprudence and relevant academic work relating to the procedural aspects, and we acknowledge the work done by the International Law Commission in submitting the draft articles.

Cuba agrees with other States on the desirability of maintaining consistency with the work of the Commission on other related issues, such as crimes against humanity and the peremptory norms of international law (*ius cogens*), as well as the issue of universal criminal jurisdiction, which is included in the long-term programme of work.

With regard to the procedural aspects of the topic, the Cuban delegation draws attention to the importance of keeping a balance between fundamental legal interests, such as the respect for the sovereign equality of States, the need to fight impunity for crimes under international law, and the protection of State officials against a politically motivated or spurious exercise of criminal jurisdiction.

Cuba maintains that for the determination of the officials enjoying immunity, it should be taken into account and consideration should be given to those who are granted immunity by the domestic legislation of States.

In this respect, the Republic of Cuba wishes to express that article 42 of the Constitution in force since 10 April of this year establishes that all persons are equal before the law, receive the same protection and treatment from the authorities and enjoy the same rights, freedoms and opportunities, without any discrimination on grounds of sex, gender, sexual orientation, gender identity, age, ethnic origin, skin color, religious belief, disability, national or territorial origin or any other personal status or circumstance that implies a distinction harmful to human dignity.

The Cuban delegation expresses its concern over the fact that draft articles 8 to 16, as currently drafted, do not establish a sufficient relationship between the proposed procedural safeguards and guarantees and that the application of draft article 7 do not fully express the procedures and guarantees necessary to avoid politically motivated prosecutions.

Cuba's substantive criminal law is applicable to Cubans who commit an offence abroad and who are handed over to Cuba to be tried by Cuban courts, in accordance with treaties signed by the Republic of Cuba.

In the Cuban Criminal Code the extradition exception established in article 6, could only be understood as an *immunity ratione personae*, when it sets forth that the extradition of foreign citizens is not applicable, when they are persecuted for having fought imperialism, colonialism, neo-colonialism, fascism or racism or for having defended democratic principles or the rights of the working people.

With regard to *immunity ratione materiae*, the Law of Criminal Procedure No. 5 of 1977 does not establish the immunity of State officials because, as previously stated, the principle of equality of all citizens before the law applies, although articles 385 to 397 do provide for procedural requirements for acting against certain State and Government officials.

Cuba's internal regulations ensure that there will be no impunity for those responsible for violations of international law and crimes against humanity.

Mr. Chairman,

Cuba commends the International Law Commission for its work on this issue and wishes to reiterate its support for any initiative aimed at clarifying the contents and preserving the enshrined regime of criminal immunity of State officials, based on the international conventions and on the principles of International Law.

In relation to draft article 12, Cuba agrees on the need that establishing the obligation to notify the Officials' State of any claim to exercise jurisdiction over them, becomes an essential guarantee of respect for the immunity of foreign officials. The obligation to notify should be considered the first guarantee for a State safeguarding its interests to invoke or waive immunity.

Cuba pays special attention to the inclusion of exceptions to immunity which does not reflect the existing international law, which would result in impunity for serious crimes against humanity as a whole.

The Cuban delegation upholds the criterion of the non-application of the principle of universal jurisdiction, nor the obligation to extradite or prosecute officials enjoying immunity.

Cuba insists on the need that the immunity regime established in international conventions, to wit, the Vienna Conventions on Diplomatic Relations, Special Missions and Consular Relations, as well as the Bustamante Code and the principles of international law, should not be modified.

The Republic of Cuba is an advocate of drafting a text on the Immunity of State officials from Foreign Criminal Jurisdiction within a substantive-procedural

framework that reinforces the legal framework established in the Charter and in the principles of International Law.

Our delegation shares the legitimate concern of many members over the fact that the arbitrary and selective application of the immunity of State officials is turned into impunity, and we therefore firmly affiliate ourselves with the purpose of strengthening the system of procedural guarantees, especially in the current international scenario, where some States are substantively and irresponsibly violating the principles and purposes of the Charter and International Law.

Achieving the just and necessary balance between the respect for international law and the procedural guarantees is a challenge for States, which is why we ratify Cuba's position of contributing to the achievement of a common effort to provide the international community with an effective regulation so that, while the immunity of State officials from foreign criminal jurisdiction is guaranteed, its use to leave serious international crimes unpunished is prevented.

Thank you