



Permanent Mission
of Ukraine
to the UN

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**Statement by Ms. Oksana Zolotarova, Acting Director-General of the
Directorate General for International Law, Ministry of Foreign Affairs of
Ukraine on the Agenda item 79 Report of the International Law Commission
on the work of its Seventy First session**

(October 31, 2019)

Mr. Chair,

At the outset let me thank the International Law Commission for its fruitful work to develop and codify the international law as well as express gratitude to the Office of Legal Affairs for its assistance to the ILC.

I would like to comment on two topics of the ILC report, in particular on draft articles on the prevention and punishment of crimes against humanity and additionally, taking this opportunity, to address the issue of protection of the environment in relation to armed conflicts, which is of particular interest for my delegation.

Mr. Chair,

We value efforts and dedication of the Special Rapporteur, Mr. Sean D. Murphy in preparation of the draft articles on the prevention and punishment of crimes against humanity. Ukraine actively followed and supported this work, and provided its comments on the draft articles, in particular on the definition of crimes against humanity.

My delegation in many occasions stated its full commitment to fight against impunity and underlined the crucial importance to bringing to justice of all perpetrators of genocide, war crimes, crimes against humanity, and other serious violations of international law.

In this regard, we welcome the adoption by the Commission, on the second reading, the entire set of draft articles on prevention and punishment of crimes against humanity. We support the recommendation of the Commission to elaborate the convention on the basis of the draft articles.

Mr. Chair,

My delegation also welcomes the adoption on first reading this July of the Commission's draft principles on the Protection of the environment in relation to armed conflicts. We would like to extend our sincere thanks to the former and current Special Rapporteurs Dr. Jacobsson and Dr. Lehto for their tireless efforts to complete this important study.

As we have noted in our previous statements, this topic is of enormous relevance to Ukraine. The ongoing foreign military aggression against Ukraine has already caused significant environmental damage that has affected civilian health and ecosystems. Moreover, region affected by the conflict is facing not only a risk of environmental emergency but also lasting pollution to the environment.

Our support for enhanced protection for the environment in relation to armed conflicts has been clear from the resolutions we have sponsored and co-sponsored at the United Nations Environment Assembly at its second and third sessions. Both of these resolutions referred to the Commission's study and we view them as complementary to its work.

Let me now turn to the draft principles on protection of the environment in relation to armed conflicts.

Starting with draft principle 8 on Human displacement, we are pleased to see proposed measures to prevent and mitigate environmental degradation in areas where persons displaced by armed conflict are located. However, we would also want the geographic areas be expanded to the areas that displaced people cross, as such territories also need protection.

On draft principle 9 on State responsibility, we agree with the approach taken by the Special Rapporteur to base this principle on the Draft Articles on Responsibility of States for Internationally Wrongful Acts. We also welcome the inclusion of "damage to the environment" as such, and as something that can, and should, be included in reparations.

Nevertheless, we are concerned that the current principles do not fully address the responsibility and accountability of non-state armed groups for damage to the environment as a result of armed conflicts. Although we welcome draft principles 10 and 11 on Corporate due diligence and Corporate liability. During these debates many states have requested that these principles also address non-state actors and, in our view, they should not be restricted to private corporations.

We would therefore support the development of a draft principle on the criminal responsibility of members of non-state armed groups for environmental damage in relation to armed conflicts, prior to the second reading of the draft principles.

On draft principle 18 on the Prohibition of pillage, we believe that this should cover the pillage of natural resources and that this reflects precedent. We also appreciate the decision by the Special Rapporteur to link this principle with draft principle 21 on the Sustainable use of natural resources in situations of occupation, which was proposed in Dr Lehto's first report.

In light of the fundamental relationship between environmental quality and human health, we view the Commission's study as much a humanitarian as an environmental one. This is a relationship we have highlighted in previous statements. The humanitarian consequences of environmental damage caused by armed conflicts can be lasting and severe for communities, affecting everything from health to livelihoods. In that respect we are pleased to see the inclusion of draft principle 26 on Relief and assistance. We also agree with the Commission that determining responsibility for harm can be complex, particularly where serious damage may be the result of numerous incidents.

As humanitarian and environmental assistance are vital for post-conflict recovery and peacebuilding, we would welcome more discussion on the modalities of assistance for communities in the commentaries for draft principle 26. We would also like to draw the attention to the question of whether simply "encouraging States" to take these vital assistance measures is sufficiently forceful and note that the original formulation for this principle used the term "should".

In concluding, we once again wish to thank the Special Rapporteurs and the Commission for their efforts in bringing this study to First Reading, and our delegation would be pleased to submit further comments on the principles. It is our view that once complete, the principles will create a strong and long overdue normative foundation for enhancing the protection of the environment in relation to armed conflicts.

Thank you.