



**PERMANENT MISSION OF THE REPUBLIC OF
SIERRA LEONE TO THE UNITED NATIONS**

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STATEMENT

by

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To the Sixth Committee
Seventy-Third Session of the United Nations General Assembly

Agenda Item 82 (Cluster I):

**“Report of the International Law Commission
on the Work of its Seventieth Session ”**

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[Please Check Against Delivery]

Mr. Chairman,

The Republic of Sierra Leone aligns itself with the statement delivered on the 22nd October by the distinguished representative of The Gambia on behalf of the African Group, and makes this intervention in our national capacity.

Sierra Leone thanks the distinguished chair of the International Law Commission (ILC), Mr. Eduardo Valencia Ospina, for introducing the report A/73/10 on the work of the ILC during its 70th session; and further congratulates the Commission for the successful completion of a highly productive session and hosting of the commemorative events in New York as well as in Geneva on its 70th Anniversary. As a small state, Sierra Leone is deeply committed to multilateralism and a rule based international legal order. That is also the *raison d'être* of the Commission's work, which in these times, seems more important today than ever before. The tremendous contributions of the Commission to the progressive development and codification of international law gives it a unique role to aid the further development of international law, especially in light of its close relationship and annual interactions with the Sixth Committee. Sierra Leone will continue to support a strong role for the ILC.

Sierra Leone welcomes the report and pays tribute to the Commission, its Members and the Special Rapporteurs, especially Mr. Georg Nolte and Sir Michael Wood on the adoption by the Commission, on second reading, of the draft conclusions together with the commentaries on "Subsequent agreements and subsequent practice in relation to the interpretation of treaties", and "Identification of customary international law" respectively. The progress being made on other topics, including protection of the atmosphere and provisional application of treaties, both of which reached the first reading stage, is also noted with appreciation. Sierra Leone has also further taken note of the Commission's requests for comments and observations on the two first reading topics by 15th December 2019. Though we are still studying them, and will continue to do so over the next several months, we hope to be able to submit written observations by the requested date.

Mr. Chairman,

In operative paragraph 5 of General Assembly resolution A/72/116, the Commission drew the attention of Governments to "*the importance for the International Law Commission of having [...the] comments and observations [of Governments] by 1st January 2018 on the draft conclusions on the topics 'Identification of customary law' and 'Subsequent agreements and subsequent practice in relation to the interpretation of treaties' [then] adopted on first reading by the Commission*". Although Sierra Leone was unable to add to the rich debate at the time as invited, we continue to see the contributions of States as fundamental in the progressive development and codification of international law. In this regard, our delegation will proceed to offer some observations on "Subsequent agreements & subsequent practice", "Identification of Customary international law", even at this stage, and on "Other Decisions".

Mr. Chairman,

On "Subsequent agreements and subsequent practice", Sierra Leone welcomes the set of 13 conclusions and the commentaries which clearly manifest scholarly rigor, deference to comments of States and completeness. That said, in considering the role of subsequent agreements and practice in the interpretation of treaties, it is the understanding of my delegation that, as a general matter, subsequent agreement and practice have been elevated to the level of "the ordinary meaning", "context", "object and purpose" in article 31 paragraphs

1 and 3, (taking it as a whole), and article 32 of the Vienna Convention on the Law of Treaties ('VCLT') respectively.

In the interpretation of treaties, paragraph 5 of Conclusion 2 suggests that interpreters read articles 31 and 32 together as “an integrated framework”; and this in our view appears to elevate “subsequent agreements and subsequent practice” to the level of “the ordinary meaning”, “context”, “object and purpose”. In our estimation, an interpreter is now tempted or is at liberty to choose how to apply the different means of interpretation in articles 31 and 32, notwithstanding the caution in the commentaries against same. The lack of uniformity in the decisions of domestic courts as noted in footnote 51 of the report is perhaps indicative of this point. The clear distinction as contained in articles 31 and 32 of the VCLT should be maintained.

With reference to Conclusion 13 on the “pronouncements of expert treaty bodies”, what is not entirely clear to our delegation is the extent of State practice examined. In the consideration of the pronouncement of expert treaty bodies in constituting subsequent agreements or practice, the example of States recognizing this possibility was limited. With this limitation, it is difficult then to attribute the pronouncements of expert treaty bodies to the practice of States, notwithstanding the explanation in the commentaries. Nonetheless, it is our delegation’s view that, to the extent that the views or pronouncements of independent expert treaty bodies generate favourable reactions or practice by States, they may – in some circumstances – constitute subsequent practice in accordance with Article 31, paragraph 3, of the VCLT.

Mr. Chairman,

On the topic of the “Identification of customary international law”, Sierra Leone again notes the technical rigor and comprehensiveness of the set of 16 conclusions, and wish to only comment on two points relating to Conclusions 6 and 15.

In Conclusion 6 paragraph 1, inaction is included as a “Form of practice” by States. Sierra Leone appreciates the explanation given to the use of the qualifying phrase ‘under certain circumstances’ in paragraph 1 of Conclusion 6. However, we are of the view that a less ambiguous term, for example ‘deliberate’ could have been employed to qualify “inaction” as may have been previously suggested to the ILC. This would have provided clarity as to the need to meet two important requirements: first the awareness of the State of the practice; and second, the conscious refrain from acting as opposed to an assumed deliberate abstention from acting.

On the issue of “Persistent objector” in Conclusion 15, Sierra Leone wishes to express its appreciation for the reiteration of the point that “*Rules of [general] customary international law, by their very nature, must have equal force for all members of the international community, and cannot therefore be the subject of any right of unilateral exclusion exercisable at will by any one of them in its own favour*”. With our overall reading of Conclusion 15; it, however, appears the conclusion is more attuned to a question of application of customary international law, rather than its identification.

Mr. Chairman,

On the aspect of “Other decisions”, Sierra Leone welcomes the decision to include the topic “General principles of law” in its current programme of work and the appointment of a Special Rapporteur. We note that the importance of the topic is matched only by the

complexity of the issues it implicates. We, therefore, look forward to following closely the ILC's work on this topic, now that it is on its active agenda.

Sierra Leone also welcomes the inclusion of “Universal criminal jurisdiction” and “Sea-level rise in relation to international law” in the long-term programme of work of the Commission as recommended by the Working Group on the long-term programme of work.

Sierra Leone is appreciative of the helpful syllabus on “Universal criminal jurisdiction” attached as Annex A to the report. In our statement before this Committee under the agenda item 87 “Scope and application of the principle of universal jurisdiction” on the 9th October 2018, which we invite colleagues to note, we noted that the Sixth Committee has made progress on the topic over the years. In addition, the Secretary-General has catalogued helpful evidence of state practice on universal jurisdiction. His rich reports have demonstrated that this principle is recognized and embraced domestically by countries from all regions of the world.

We continue to reiterate the fact that in Decision EX.CL/731(XXI) adopted in Addis Ababa on 13 July 2012, the African Union Assembly of Heads of State and Government endorsed the African Union Model National Law on Universal Jurisdiction over International Crimes. The AU Assembly commended the model law to all AU member states. The core goal of the model law is - and remains - to strengthen the domestic capacity of African states to investigate, prosecute and punish the perpetrators of a short list of crimes especially war crimes, crimes against humanity and the crime of genocide. Also, we reiterate the view of the Assembly of Heads of State and Government of the African Union in their January 2018 Decision (EX.CL/1068/XXXII) on the “apparent impasse” in the 6th Committee on the topic.

Mr. Chairman,

Sierra Leone also noted that the decision of the ILC to place this topic on its long-term programme of work during its 70th session resonates with the invitation of delegations here in the Sixth Committee. This is also consistent with our resolution on this topic, last adopted on 18 December 2017, in which the General Assembly decided at paragraph 2 that consideration of the issue here “*is without prejudice to the consideration of this topic and related issues in other forums of the United Nations*”.

In our debate on agenda item 87, Sierra Leone posed the question: what should be the outcome of the ILC's future work on this topic? In Sierra Leone's view, without prejudice to its own views on the matter, the ILC may consider assisting with draft guidelines or draft conclusions on universal criminal jurisdiction. The ILC should also use the space that seems to have been created in its work programme with the completion of several of its current topics to move this item on to its active agenda. With regards to this call, we further note that at least three additional ILC topics, on protection of the atmosphere, provisional application of treaties, and crimes against humanity respectively, will be concluded in the next two years with the latter maturing as early as next year.

Sierra Leone, however, believes that the consideration of this topic and related issues in other forums of the United Nations should not negate the continuous engagement on the topic by the Sixth Committee. A genuine opportunity has availed itself, through this topic, for the Sixth Committee and the ILC to strengthen our working relationship by the concurrent consideration

of this item. We will not be giving up the item, or losing it to the ILC so to speak, as the Commission's potential legal work on it does not preclude our continued engagement on it.

The unique opportunity offered us has already been recognized by some delegations. It also seems to be recognized by the Commission itself, which in fairness, did not propose to take up all the issues. Indeed, the ILC explicitly emphasized in Annex A of its 2018 report, at paragraph 26, *“the Commission should not try to be comprehensive in addressing all the issues where there is a lack of clarity among States.”* Going even further, and again I quote the Commission's own words, *“It could rather concentrate on a more limited set of legal concerns on which it can, through its work and engagement with the Sixth Committee, provide further guidance.”*

In sum, Sierra Leone therefore supports both the African Group's position and ILC's proposal. Both sides have emphasized continued Sixth Committee deliberation over some of the outstanding issues since not all issues are being proposed to be studied by the ILC. Relatedly, it bears noting that issues such as immunity of state officials are not being proposed for consideration under this topic, which is being separately considered by the ILC and may well be the subject of an ICJ advisory opinion as of next year. We, therefore, urge delegations to consider embracing this opportunity to enhance our symbiotic relationship with the ILC through concurrent work on this item— a matter that was discussed at length during the 70th anniversary events.

Finally, Mr. Chairman, on “Sea-level rise in relation to international law”, Sierra Leone similarly appreciates the syllabus on the topic attached as Annex B to the report. With our capital city, Freetown, only just recovering from a fatal environmental incident in 2017, and 402 kilometres of Sierra Leone's coastline exposed to the dangers of rising sea-levels, the importance of the topic cannot be overemphasized from a small State perspective. One issue that may have to be considered, perhaps after an initial review, “by the study group” is whether this topic is more suitable for the appointment of a special or even joint special rapporteurs. Sierra Leone joins the call for the inclusion of the topic in the active programme of work of the Commission. Ultimately, as the Commission looks to its future role, we believe that these are the types of pressing issues of concern to the international community as a whole that the ILC should be studying to enhance its contribution to the progressive development and codification of modern international law.

I thank you for your kind attention.