



Statement by the Republic of Cyprus

Item 79 (Cluster II) – Report of the International Law Commission, Plenary session of the 74th UN General Assembly, 5 Nov. 2019

Mr. Chairman,

Cyprus wishes to comment on **Chapters VI (Protection of the environment in relation to armed conflicts)**, and **X (Sea level rise in relation to international law)**.

On the topic of the **Protection of the environment in relation to armed conflicts**, Cyprus expresses its appreciation to Special Rapporteur Marja Lehto for the preparation of the second report, as well as to the previous Special Rapporteur Marie G. Jacobsson for her valuable contribution on the topic. We also commend the Commission for the adoption on first reading of the entire set of the twenty-eight draft Principles, incorporating also eight new draft Principles, along with commentaries on all draft principles.

The draft principles address many pressing issues, such as the designation of significant environmental and cultural areas as protected zones, the protection of the environment of indigenous peoples, the prevention and mitigation of environmental degradation in areas where persons displaced by armed conflict are located, corporate due diligence and liability, as well as the environmental obligations of an occupying power. We underline the structural organization of the Draft Principles into parts arranged by the type of phase of conflict: those which apply in all circumstances, those which apply during armed conflict, during occupation and post-conflict.

Cyprus wishes to make some general comments before commenting on specific principles.

First and foremost we would like to see more highlighted the intrinsic links of this topic with areas such as the laws of armed conflict, with international environmental law, with law of the sea and other relevant parts of international law.

We would then like to have clarity on issues like whether all armed conflicts are covered by the principles, including hybrid and not international. Furthermore, what is the relationship of the principles with IHL and are the ICRC Guidelines for the Protection of the Natural Environment in Situations of Armed Conflict taken into account?

In situations of partial occupation of territory of another state how is the area of responsibility of the occupying power is defined, in particular when it comes to maritime areas and bearing in mind the *suis generis* situation of these areas? Shouldn't we exclude

out of hand any possibility for the occupying power to make any use of resources and confine its responsibility in environmental protection *stricto sensu*?

-While the factual definition of situations of occupation is clearly set out by the international law of armed conflict and specifically the 1907 Hague Regulations and the 1949 Fourth Geneva Convention, there are a number of occupation situations in the world today. I recall that the Fourth Geneva Convention stipulates that occupation occurs if the territory of a "High Contracting Party comes under partial or total occupation". Are all the different occupation situations sufficiently covered and is the legal effect proposed by the principles the same for all such situations despite their nuances?

-Most, if not all, occupation situations involve extensive movements of people from the occupier's territory into the occupied territory for purposes of settlement. As such, there might not be an indigenous population in the occupied territory anymore to justify certain actions which might be legitimized by the fact that they are undertaken to serve the interests of the local population. Is this taken into account? How are we ensuring the avoidance of practices that legitimize the transfer of such populations, which is contrary to IHL, and beyond this, how do we avoid the usurpation of natural resources for the benefit of a population which has been transferred illegally into an occupied territory?

-More generally, how do we ensure that what we do here merely clarifies and codifies the responsibility of an occupying power *vis-à-vis* the territory it occupies and does not create, nor allows the interpretation of creating, rights of any kind, over the territory, people, environment and resources under the effective control of either a state or non-state armed group? How do we codify this responsibility as the taking of all necessary measures to preserve the environment as it was when the occupation occurred without pillaging the resources which the occupied or partially-occupied state has temporarily no control over?

How do we ensure that there is no prejudice to the permanent sovereignty of a state over its natural resources, as repeatedly affirmed by the United Nations, stemming from this kind of responsibility to protect the environment?

-How do we ensure a prohibition of the exploitation of natural resources to sustain war economies or for personal gain?

-How are reparations to be made for the pillaging of an occupied state's resources or for the irreparable damage to its environment?

-What do the principles say regarding the strain on resources as a result of consequences of armed conflict such as displacement?

-According to a report published by the ICRC last month, "over 80% of all major armed conflicts between 1950 and 2000 took place directly in biodiversity hotspots that sustain around half the world's plants and many rare species of animals". How will the principles

help avoid environmental degradation in the first place, including through Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict?

On **Draft Principle 11** regarding corporate liability, Cyprus recommends the inclusion of "affiliate entities" in addition to subsidiaries, to the extent that any such affiliate acts under the direction or control of another affiliate entity. That is, if a corporation is acting at the direction or control of another, its position in the corporation organizational structure is not important. This is consistent with legal regimes recognizing circumstances of piercing the corporate veil may extend to affiliate entities as opposed to only parent and subsidiary entities. Moreover, an entity may act under the direction of another without necessarily being controlled by that entity. Thus, we propose the following amendment "*Such measures should, as appropriate, include those aimed at ensuring that a corporation or other business enterprise can be held liable to the extent that such harm is caused by its subsidiary [addition: and/or affiliate entity] acting under its [addition: direction or control] de facto control.*" Of course, this is without prejudice to the rights of the territorial State to pass laws and issue decisions with respect of acts or omissions of corporations operating in an occupied territory that have an effect on the territorial state.

With respect to **Part Four, commentary (Para 1, p. 266)** we would like to stress that the statement supporting that '[a] stable occupation shares many characteristics with a post-conflict situation and may with time even come to "approximating peacetime" conditions', is problematic and may wrongly be construed as normalizing belligerent occupation. Furthermore, concerning commentary in **para. 3, p. 266**, we do not agree that temporary authority extends over the adjacent maritime areas over which the territorial State is entitled to exercise sovereign rights, namely the continental shelf and the exclusive economic zone. Temporary authority may be transferred in adjacent maritime areas where the territorial State is entitled to exercise sovereignty, namely the territorial sea, and this should be assessed on a case-by-case basis depending on whether effective control of those areas has been retained by the territorial State. Thus, we propose the following amendment, "Once established in the territory of an occupied State, at least when the whole territory is occupied, the temporary authority of an Occupying Power [addition: may] extend[s] to the adjacent maritime areas over which the territorial State is entitled to exercise [addition: sovereignty]. Therefore, the authority of the Occupying Power may only extend to the airspace over the occupied territory and over the territorial sea. Such authority underscores the obligation of the Occupying Power to take appropriate steps to prevent transboundary environmental harm.

Regarding **Draft Principle 21**, we would like to underline the point made in paragraph 2, namely that 'a [...] limitation deriving from the nature of occupation as temporary administration of the territory prevents the Occupying Power from using the resources of the occupied country or territory for its own domestic purposes.' We also stress the importance of the Commission's position outlined in par. 3 of the commentaries that the

relevant provision is based on article 55 of the Hague Regulations which regards the Occupying Power "only as administrator and usufructuary", and this limitation is complemented and reinforced by the statement in par. 6 that "*while the right of usufruct has traditionally been regarded as applicable to the exploitation of all kinds of natural resources, including non-renewable ones, the various limitations outlined above serve to curtail the Occupying Power's rights to exploit the natural resources of the occupied territory*".

On Chapter X, the **topic of Sea level rise in relation to international law**, Cyprus as an island-state remains concerned about the adverse consequences resulting from climate change, and recognizes the gravity of the issue not only for small-island States, but for the international community as a whole.

Cyprus wishes to incorporate by reference its statement of last year during the consideration of this topic in the plenary meeting of the Sixth Committee, including the importance that the results of any study undertaken must be in accordance with the 1982 United Nations Convention on the Law of the Sea (UNCLOS). In this context, we are of the view that in conducting such work, the ILC does not have the mandate nor is there sufficient state practice to proceed toward codification. We would like to reiterate that any attempt to modify or in any way to modify the UNCLOS will have detrimental consequences.

That said, with regards to the sub-topics undertaken by the Study Group, Cyprus expresses its support for the exercise on potential effects of rising sea levels on questions of statehood and migration.

I thank you for your attention.