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74RD SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

Sixth Committee

Agenda Item 79

**Report of the International Law Commission
on the work of its seventy-first session
Cluster II and III**

Chapter VI: Protection of the environment in relation to armed conflicts
Chapter VIII: Immunity of State officials from foreign criminal jurisdiction
Chapter X: Sea-level rise in relation to international law
Chapter VII: Succession of States in respect of State responsibility
Chapter IX: General principles of law

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Chapter VI : Protection of the environment in relation to armed conflicts

Mr. Chairman,

On the topic of the protection of the environment in relation to armed conflicts, allow me to commend the Special Rapporteur, Ms. Marja Lehto, for her Second Report, which contains an in depth analysis of this topic, responding to particular questions of environmental protection, with reference also to the basic principles set out in previous sessions. This last Report deals with pressing issues such as the environmental impact of displacement and questions of responsibility, while taking steps to achieve technical and structural completion of the codification process.

Turning to draft principle 2, we are of the view that the latter should better refer to “preventive measures for minimizing or avoiding damage”. There is no reason to confine preventive measures to the mere minimization of damage, given that they may be adopted even in peacetime, as recognized in the commentary to this provision.

We particularly welcome the introduction of draft principles 4 and 17, which acknowledge the protected status of areas of particular environmental interest. With that said, more thorough inclusion of the already existing protected zones in article 17 should be envisaged. In our view, this provision should cover also sites whose protected status has not been established by agreement but through decisions of relevant treaty bodies (such as natural sites of outstanding universal value included in the World Heritage List of the 1972 UNESCO Convention).

We note with appreciation the adoption of draft principle 8, since safeguarding against environmental degradation is essential in order for displaced persons to enjoy, in the areas where they are sheltered, satisfactory conditions of dignity and sanitation. Draft principle 8 is animated by a spirit of solidarity and burden-sharing in providing relief and assistance to these persons as well as to the local host communities.

The commentary to article 13 stresses, in its paragraph 5, that, together with the law of armed conflict, other rules of international law providing environmental protection, such as international environmental law and international human rights law remain relevant as “applicable international law”. This being

said the commentary should, in our view, inform on how and to what extent the general principles of environmental law operate in wartime, as well as how they interact with the *ius in bello* rules.

In this vein, we are of the view that the duty of care enunciated in the second paragraph of article 13 should be considered together with the no-harm principle of international environmental law, given also that both of them contain a due diligence standard.

The commentary to article 14 should, in our view, establish a link between the rule concerning precautions during attack so as to avoid or minimize collateral damage to the environment, and the due regard clause of Rule 44 of the ICRC Study on International Environmental Law, which provides for a coordinated application of that rule and of the precautionary principle of general environmental law.

We note with appreciation the insertion of draft principle 18 on the prohibition of pillage as well as the clarification, in paragraph 8 of the relevant commentary, that this prohibition applies also in situations of occupation.

Turning to draft principle 21, we welcome the clarification, provided in the first paragraph of the commentary, that the use of natural resources by the occupying power applies to the extent allowed not only by the law of armed conflict but also by other applicable rules of international law. Next to the already mentioned principle of the permanent sovereignty over natural resources and the principle of self-determination, we are also of the view that the commentary should include a reference that States should abstain from recognizing situations of illegal occupation and engaging in economic or other forms of relationship with the occupying power.

We fully welcome draft principle 26 on relief and assistance in case the origin of environmental damage remains unidentified or reparation is unavailable. We are, however, of the view that this provision should make clear that the State liable, if known but unwilling to provide compensation, is not relieved from its secondary obligations under the law of state responsibility once draft principle 26 is put into motion through action and contributions by benevolent States or international organizations. For this reason, it might be appropriate to provide, in a separate paragraph, that principle 26 is without prejudice to principle 9 of the present draft principles.

In the matter of remnants at sea (draft principle 28), and given that the latter may also include leaking wrecks or warships, jurisdiction upon and removal of which are regulated by general international law, including the UNCLOS, we suggest the addition of the phrase "...in accordance with applicable rules of international law, including the UNCLOS..." between the phrases "...should cooperate..." and "...to ensure...".

Chapter VIII: Immunity of State officials from foreign criminal jurisdiction

Mr. Chairman,

Greece would like to thank the Special Rapporteur for her extensive seventh report, in which she addressed in a broad and comprehensive manner the procedural aspects of immunity and proposed nine new Draft Articles.

In our view, the debate within the Commission this year has, once again, demonstrated the complexity and the inherent difficulties of the relevant issues, especially given the scarcity of international and national case law and practice. Likewise, and more importantly, it indicates that the divergence of views regarding the content of Draft Article 7 may significantly affect and delay the progress of work on this topic.

In this respect, we would like to reiterate the importance we attach to the clarification of procedural aspects of immunity and the elaboration of relevant rules and safeguards, since we believe that this is indeed a field where the Commission can provide valuable practical and workable guidance to States.

While, therefore, acknowledging the difficulties involved, we regret the fact that the Commission, for the second year in a row, has not provisionally adopted any Draft Article on these issues and we look forward to carefully considering any such Draft Articles next year.

Chapter X: Sea-level rise in relation to international law

Mr. Chairman,

on the issue of sea-level rise in relation to international law, which, despite the concerns already expressed by some delegations, including the Greek Delegation, has been recently added in the Commission's program of work, allow me to raise some preliminary comments:

Greece is fully aware of the importance of the topic and shares the relevant concerns of many states. We are thus of the view that scientific research as well as academic consideration of it should be further promoted, for the international community to fully grasp the implications of this unfortunate phenomenon, including any legal ones.

However, we believe that the matter does not lend itself for codification at the present stage, as lack of state practice in addressing legal issues related to sea-level rise and the ensuing lack of generally accepted rules does not provide solid ground for such an endeavor.

We are concerned that the consideration of the matter within this uncertain context might call into question some cardinal and well established law of the sea rules reflected in the UNCLOS.

These concerns are in our view heightened by the issues referred to in par. 15 of annex B of the ILC's 2018 report and scheduled to be addressed by the Commission in its consideration of the topic. In addition, one fails to understand the exact scope of each of these issues, given the degree of overlap among them.

This being said, we are ready to closely follow the discussions within the Commission and its Study Group, having in mind the importance of preserving the integrity of the UNCLOS, already highlighted in the sixth preambular paragraph of GA 73/124 Oceans Resolution, together with the principle of stability of maritime boundaries which cannot be affected by climate change and its effects, as clearly affirmed by the Permanent Court of Arbitration in the *Bay of Bengal Maritime Boundary Arbitration Award (Bangladesh v. India, Award July 7, 2014, par. 217)*.

Taking note of the assurance provided in para. 14 of Annex B of the ILC's 2018 Report, i.e. that the Commission will not propose modifications to existing international law such as the UNCLOS, we sincerely hope that the ILC, in dealing with the subject, shall also avoid to fragment, undermine or derogate from the provisions of one of the most fundamental pillars of today's international legal order.

Chapter VII: Succession of States in respect of State responsibility

Mr. Chairman,

On the topic of the succession of States with respect to State responsibility, allow me first to commend the Special Rapporteur, Mr. Pavel Šturma, for his Third Report which, deals, among others, with the thorny issue of succession to the rights and claims of the predecessor State against third States.

Despite the scarcity of State practice and case-law on this issue the relevant proposals of the Special Rapporteur, in draft articles 12-15, are in our view well balanced and, as the use of terms such as "may request" indicates, flexible enough, to easily adapt to the particularities of each case and inform appropriate solutions.

We also note with satisfaction that the Special Rapporteur's approach in both Parts II and III of the draft articles, the first one dealing with transfer of obligations and the second one with transfer of rights, is based on the same two premises : a) if the predecessor State has ceased to exist, there should be no extinction of responsibility, irrespective of whether that State was the wrongdoing State (draft articles 10-11) or the injured State (draft article 14), and b) in case the predecessor State continues to exist, in principle no transfer neither of the obligation to provide reparation, if that State has been the wrongdoing State (draft article 9), nor of the right to claim reparation, if the predecessor State has been the injured State (draft article 12), should occur.

Regarding the no-transfer in case the predecessor State continues to exist, special circumstances may justify exceptions to the rule, as provided in draft articles 9 paragraph 2 and 12 paragraph 2 respectively. We note however

that while the second provision, dealing with the transfer of rights to the successor State, sheds light on those circumstances by referring to the territory or the nationals of the successor State, the former provision does not provide any relevant hint. We are of the view that regarding this provision, more guidance should be provided by the Commission, either through more explicit wording in the relevant text or in the relevant commentary.

In this context, we are of the view that the commentary to draft article 9 paragraph 2 should, *inter alia*, take into account any links between the illegal act and the territory of the successor State. For instance, in case a cultural object had been illegally removed from the territory of a third State by the predecessor State and is currently located in the territory of the successor State, it is the latter that should proceed with its restitution. In addition, the commentary should, in our view, address the issue of immovable foreign property in the territory of the successor State which had been nationalized without adequate compensation from the predecessor State.

Turning to the issue of diplomatic protection in cases of State succession, we are of the view that the application of the principle of continuous nationality would create inequitable consequences, as it would result in neither the predecessor nor the successor State being entitled to seek redress against the wrongdoing State for the damage suffered by a private person. Thus, we concur with draft article 15 proposed by the Special Rapporteur, to give the successor State the possibility to inherit the right to claim reparation on behalf of its national.

Chapter IX: General principles of law

Mr. Chairman,

Greece expresses its sincere thanks to the Special Rapporteur, Mr. Marcelo Vazquez-Bermudez, for his First Report on this important topic, and we welcome its inclusion in the Commission's programme of work.

In accordance with article 38 of the ICJ Statute, the Court may apply the general principles of law when deciding upon disputes submitted to it. It is generally accepted that general principles of law constitute one of the sources

of International law. It should also be stressed that when this article was drafted, the general principles of law were included therein to provide applicable rules in cases where neither a treaty or an established rule of customary law existed .

The concerns shared at that time by the drafters of this article have been largely covered today, in so far as international treaties as well as customary international law have expanded and evolved over time, covering most of the fields of international relations.

Nevertheless, we believe that the Commission can provide useful clarification of the nature, scope and function of general principles of law, as well as of the criteria and methods for their identification, thus complementing its existing work on the sources of international law.

Greece also agrees that the final outcome of the Commission's work on this topic should take the form of conclusions accompanied by commentaries.

I thank you Mr. Chairman.