



**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 of the 74th Session of the
United Nations General Assembly

Agenda Item 79:
“Report of the International Law Commission
on the work of its seventy-first session”

Cluster II
Chapters VI, VIII and X
Protection of the environment in relation to armed conflicts
Immunity of State officials from foreign criminal jurisdiction
Sea level rise in relation to International Law

New York, 1st November 2019

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Chair,

The Republic of Sierra Leone would like to offer some preliminary remarks on Cluster II topics in relation to agenda item 79: “*Report of the International Law Commission on the work of its seventy-first session*”; namely, “protection of the environment in relation to armed conflicts”, “immunity of State officials from foreign criminal jurisdiction” and “sea level rise in relation to international law.”

On “Protection of the environment in relation to armed conflicts”

As this is our first time commenting on “*protection of the environment in relation to armed conflicts*”, since it was added to the ILC’s programme of work, Sierra Leone expresses its appreciation for the hard work of the first rapporteur for the topic, **Professor Marie Jacobsson of Sweden**, and **Ambassador Marja Lehto of Finland** – the current Special Rapporteur. We appreciate Ambassador Jacobsson’s role, leading the work on the topic and setting out the framework for the project. For her part, Ambassador Lehto’s two excellent reports and other contributions over the last two sessions have enabled the Commission’s consolidation and adoption, on first reading, of the complete set of the 28 draft principles along with the commentaries.

Our initial impression is that the draft principles contain provisions of different normative value. Some reflect customary international law while others are non-binding recommendations, all with the aim of enhancing protection of the environment before, during or after armed conflicts. Given that the environment constitutes part of the global commons, and is not necessarily territorially limited, we share the doubt of Special Rapporteur Lehto on the merit of qualifying conflicts as either international or non-international in nature. We believe that both should be taken into account, since the object of protection is the environment itself. In any event, we hope to take up the invitation to offer detailed written comments, as requested by the Commission, by December 2020.

Pending that, allow us to offer some preliminary observations on principles 8, 10 and 11.

First, concerning principle 8, which addresses human displacement, my delegation appreciates the recommendation calling on States, international organisations and other relevant actors to take appropriate measures to prevent and mitigate environmental degradation in areas where persons displaced by armed conflict are located, while providing relief and assistance for such persons and local communities. We note that no definition of displacement is provided. We are pleased to see the reference to paragraph 5 of the commentary discussing the African Union Convention for the Protection and Assistance of Internally Displaced Persons and believe that it could serve as additional inspiration. Sierra Leone joined the latter treaty in 2010.

Second, on principle 10, Sierra Leone agrees that States should take appropriate legislative and other measures to ensure that corporations and other business enterprises operating in or from their territories exercise due diligence to protect the environment, including in relation to human health, when acting in an area of armed conflict or in a post-armed conflict situation. Here, we believe that the scope of the duty will be higher in relation to the State of domicile of the

corporation given that the State of business/operation may itself be facing governance challenges during or in the aftermath of conflict. The natural resources are to be purchased or obtained in an environmentally sustainable manner, and in accordance with both the laws of the States concerned.

On this point allow me Chair to share our experience and reflect on our national statement on the ILC Report on its work in the 58th and 59th sessions, where proposals were made on the floor, by my delegation, for the Commission to add the following topics in its programme of work: **Firstly**, the legal consequences arising out of the use of private armies in internal conflicts. **Secondly**, the legal consequences arising out the involvement of multilateral corporations in internal conflicts. **Thirdly**, the legal consequences arising out of the use of private security agencies in internal conflicts.

The topics were proposed “*not as an intellectual exercise but as a result of our own experience. These topics are important in our view in light of the ICJ’s judgment in the case – Application of the Convention on the Prevention and Punishment of the Crime of genocide (Bosnia and Herzegovina v. Serbia and Montenegro). This case which turns on the responsibility of paramilitary units in internal conflicts and the tests of the ICTY and that of the ICJ in determining responsibility for the acts. We look forward to the Commission giving effect to our topics*”. Twelve years after the proposals were made, we welcome the inclusion of the elements in the Commission’s work on “*protection of the environment in relation to armed conflicts*”.

On the third and final point, on principle 11, we agree that it is important that corporations and other business enterprises – including their subsidiaries and other agents under their *de facto* control – can be held liable whether civil and/or criminal, for harm caused by them to the environment. This will require provision of adequate and effective procedures and fair and equitable remedies and reparations for the individual and communities that are the victims of such harm.

Chair,

Immunity of State officials from foreign criminal jurisdiction

We now turn to the topic “Immunity of State officials from foreign criminal jurisdiction”. Again, Sierra Leone has not yet had the opportunity to share their views on this extremely important topic for States and the international community. We aim to do so in a more comprehensive manner upon completion of the first reading, which we hope to see next year, at which point we will have in full view the entirety of the project accompanied by the commentaries.

For now, my delegation must extend our deep gratitude to the Special Rapporteur, **Professor Concepcion Escobar Hernandez of Spain**, for her excellent efforts and her deep dedication to the success of this topic. Though the topic is sometimes sensitive both within the ILC, as we deduce from the reports, and amongst States, Sierra Leone would join the many in both sides that have suggested that the ILC should strike a balance between, on the one hand, the imperatives of sovereignty and, on the other hand, the contemporary demands for accountability especially in relation to the most serious crimes of concern to the international community as a whole.

We support the ILC's adoption of the draft articles concerning immunities *ratione personae* and immunities *rationae materiae*. We underscore, however, that there may be potential for abuse when draft article 7 is applied. We believe that the ILC should therefore carefully consider strong procedural safeguards including the institutions, invocation and waiver of immunity; but also going beyond them. This would be required for the adopted articles not to lead to other undesirable frictions in international relations.

In this regard, while we are very grateful to the Special Rapporteur for her excellent Sixth and Seventh Reports, the latter being a summary of debates in the Commission and the Sixth Committee, we regret that the progress on the work in the Drafting Committee on the safeguards in the recently concluded session was not as substantial as we would have wished for. We call on the ILC to prioritise the topic next year, in view of its significance, and hope that the first reading will be completed, and that States and other observers will have sufficient time to provide written observations.

Chair,

Turning now to some brief remarks on the last topic: Sea level rise in relation to international law

Sierra Leone, like the African Group, welcomes the addition of the topic "*sea level rise in relation to international law*" into the current programme of work. Given the alarming reports of the Intergovernmental Panel on Climate Change (IPCC) on the vulnerabilities of the planet and the disproportionate impact anticipated in relation to small island and developing States, costal States, including Sierra Leone, we are fully convinced that the ILC should address core legal aspects stemming from sea level rise. Yet, the nature of the topic might pose a methodical challenge in the sense that State practice in this area may be lacking or not even desirable.

We further appreciate the establishment of the study group to be co-chaired by a representative group of Members of the Commission. We generally agree with the proposed collaborative approach, especially given the subject matter at hand. We believe that the ILC should endeavor to strike a balance in its treatment of the topics identified, and at the appropriate stage, might need to consider whether new or additional topics of concerns to State could be included within the scope of the study. We hope that the existing legal regimes, whether in relation to human rights and migration or Statehood, and recognition or the law of the sea especially the United Nations Convention on the Law of the Sea, should be complemented and not disturbed.

I thank you for your kind attention.