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77TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

Sixth Committee

Agenda Item 77

**Report of the International Law Commission
on the work of its seventy-third session
Cluster I**

Chapter IV: Peremptory norms of general international law (jus cogens)
Chapter V: Protection of the environment in relation to armed conflicts

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Chapter IV: Peremptory norms of general international law (*jus cogens*)

Mr. Chairman,

I will first be addressing the topic of peremptory norms of general international law (*jus cogens*). Greece welcomes the adoption by the International Law Commission on second reading of a set of 23 conclusions with an annex and commentaries thereto on that topic and takes the opportunity to congratulate the Special Rapporteur, Mr Dire Tladi, for the outstanding quality of his five reports which allowed for the successful completion of the work of the ILC on this very important and complex matter.

Greece has contributed to the course of the consideration of the topic and we would like today to make a few comments on some of the conclusions and commentaries thereto adopted by the Commission.

First, we particularly welcome the Commission's conclusion, in paragraph 3 of the commentary to conclusion 2, that the persistent objector rule does not apply to peremptory norms and that such norms do not apply on a regional or bilateral basis. Both conclusions are, to our view, well-founded and stem from the universal applicability of jus cogens norms.

We also note with appreciation that conclusion 2 provides, inter alia, that *jus cogens* norms reflect and protect fundamental values of the international community. We are however of the view that this cardinal characteristic of *jus cogens* norms provides also a criterion for their identification given that, for a norm to qualify as peremptory, it should be accepted and recognized by the international community of States as reflecting and protecting such values. Positions taken by states as well as judicial pronouncements often refer to such acceptance and recognition when advocating that a norm is part of *jus cogens*. For this reason, we are of the view that affirmative language in this respect should have been inserted in paragraph 19 of the commentary to conclusion 2.

Turning to paragraph 19 of the commentary to conclusion 2, we share the Commission's assessment that the characteristics of *jus cogens* set out in conclusion 2 may provide context in the assessment of evidence

for the identification of peremptory norms. The finding that the characteristics of *jus cogens* contained in this conclusion are not criteria for the identification of a peremptory norm is, in our view, questionable in relation to the characteristic of *jus cogens* as reflecting and protecting fundamental values of the international community.

With regard to conclusion 21 on the recommended procedure in case a State invokes a peremptory norm as a ground for the invalidity or termination or a rule of international law, we note with satisfaction that its wording has been amended to make clear that the above procedure is not binding upon States. We note however that according to the commentary of paragraph 5 to conclusion 16, recourse to the procedure of conclusion 21 may also be made to contest the legal effect of a resolution, decision or other act of an international organization. Besides the fact the these acts often do not qualify as rules of international law in the sense of conclusion 21, we are of the view that the procedure set out in conclusion 21 might not always work in relation to acts of international organizations.

We also welcome the introduction of an annex with a non-exhaustive list of norms that the International Law Commission has previously considered as having the status of *jus cogens*. Allow us to refer in particular to the first of them, the prohibition of aggression, a cardinal norm of modern international law, and stress its link with the UN Charter prohibition of the use of force, a rule which has also been considered by the Commission, in its 1966 commentary to draft article 50 of the draft articles on the law of treaties, as having the character of *jus cogens.*

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

Mr Chairman,

I will now be addressing the topic of the protection of the environment in relation to armed conflicts. Greece welcomes the adoption by the International Law Commission on second reading of a set of 27 Principles and commentaries on that topic and would like to commend the

Special Rapporteur Ms. Marja Lehto as well as the previous Special Rapporteur Ms. Marie Jacobsson, for the high quality of their reports.

While fully aligning ourselves with the statement of the European Union on the matter, we would like to make the following observations:

We welcome draft principles 4 and 18 on protected zones and would like to notice the inclusion, in the scope of application of principle 4, not only of protected zones established by agreement but also of protective zones established “otherwise”, a term including those designated through an international organization or by a relevant treaty body.

We note with appreciation that, in accordance with paragraph 1 of principle 13, the environment shall be respected and protected in accordance with applicable international law and, in particular, the law of armed conflict. In our view however, paragraph 4 of the commentary to this provision should not only briefly refer to such other rules of international law which remain relevant during armed conflict, but also provide some guidance on how and to what extent such rules, in particular the general principles of environmental law, interact with the *ius in bello* rules.

We also welcome the clarification, in paragraph 8 of principle 16 referring to the prohibition of pillage, that the latter applies also in situations of occupation.

Turning now to principle 20 on the sustainable use of natural resources in an occupied territory to the extent this is permitted to the Occupying Power, we are of the view that the commentary should have clarified that, in cases of illegal occupation, third States should abstain from any transaction with regard to such natural resources that might entrench such an occupation.

We fully welcome draft principle 25 on relief and assistance in case the origin of environmental damage remains unidentified or reparation is unavailable and note with satisfaction the clarification, in paragraph 1 of the relevant commentary, that the responsible State is not relieved from the obligation to make reparation.

In the matter of remnants of war at sea (principle 27), we acknowledge references to the UNCLOS in the footnotes to the relevant

commentary. As however such remnants may also include leaking wrecks or warships, jurisdiction upon and removal of which are regulated by applicable international law including the UNCLOS, we would have preferred a reference to the latter in the text of principle 27.

Thank you Mr Chairman