بسم الله الرحمن الرحيم

The Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations
New York

Statement of the **Hashemite Kingdom of Jordan**

Before the Sixth Committee of the 77th Session

of the United Nations General Assembly

Delivered by

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On the agenda item

"Report of the ILC"

Cluster 1

At the outset, I would like to congratulate you, Chair and members of the Bureau of the 6th Committee on your election to the Bureau, and assure you of our full cooperation on all aspects relating to the work of the Committee.

I also want to commend the Chair and members of the International Law Commission for all their efforts during the 73rd session of the Commission, which culminated in the adoption of several outcomes on second and first readings, as well as progress on other topics on the agenda of the Commission.

I would start with comments on Cluster 1 of the Report of the Commission, namely the preemptory norms of the general international law "*jus cogens*" and the "protection of the environment in relation to armed conflict."

Preemptory Norms of General International Law (*jus cogens*)

I would like to thank the Special Rapporteur, Mr Dire Tladi, for bringing the topic to a successful conclusion, and for the adoption by the ILC of the relevant draft conclusions on second reading. I welcome the fact that the 5th report of the Special Rapporteur maintained the cautious approach to the topic and the fact that the draft conclusions mostly reflect the existing practice of States, while also contain some elements of *lex ferenda*. The commentaries of the Commission have to a large extent, successfully captured the distinction between the *lex lata* and the *lex ferenda* elements in the draft conclusions.

My delegation remains of the view that the draft conclusions should be used to identify *jus cogens* norms and their legal consequences, and not be a prelude to advance policy considerations.

I turn now to specific comments on the draft conclusions:

On draft conclusion 2 (nature of *jus cogens*):

I would like to reiterate that this conclusion does not set criteria for the identification of *jus cogens* norms, but is mainly descriptive of their nature. And the most important aspect in this regard is that *jus cogens* norms protect the fundamental values of the international community as a whole; this being a wider concept than the fundamental values of the international community of States as a whole.

On draft conclusion 5 (basis for *jus cogens*):

My delegation remains of the view that the relevant practice indicates that only customary international law forms a basis for *jus cogens* norms. Nonetheless, we support the distinction made in the draft conclusion, which highlighted customary international law as a basis over treaty rules and the general principles of law.

On draft conclusion 7:

My delegation supports the proposition that acceptance and recognition of the international community of States as a whole need not be unanimous but should be undertaken by a large majority of states without qualification. As provided for in the draft conclusions, such majority must also be representative to reflect the positions of States from the various regions and legal traditions.

On draft conclusion 16:

I welcome the reiteration that *jus cogens* norms are superior to binding resolutions and decisions of international organizations, but that should not be used by States as a pretext to avoid carrying out their obligations under such decisions or resolutions that are otherwise binding.

On draft conclusion 21 (Recommended Procedure):

My delegation expresses doubt about the procedure proposed which raises several questions, including who are the "other States concerned", especially in relation to a customary rule or a general principle of law? And which entity would notify of the grounds for invalidity and the objection(s)? In short, this is an impractical procedure.

Finally, Chair, Jordan supports the non-exhaustive list contained in draft conclusion 23 which were previously identified by the ILC in previous projects. The list is an important marker to avoid abuses in identifying other *jus cogens* rules and in applying the criteria for such identification.

I now turn to the topic "protection of the environment in relation to armed conflict"

I would like to commend the Special Rapporteur, Ambassador Marja Lehto, for her dedication to the project over the years, which led to the adoption of the draft principle on the topic on second reading. I also wish to thank the first Special Rapporteur Ambassador Marie Jacobsson, for suggesting the topic to the Commission and developing its core structure.

My delegation supports the approach in the project in covering the three stages of the conflict: pre-conflict, during conflict, and post-conflict, while taking into account that certain principles apply *mutatis mutandis* to the three stages of conflict.

During conflict, the rules of international humanitarian law are the *lex specialis*. Yet, as the ICJ has stated, other rules such as those of international human rights law and environmental law, also apply to the extent that they do not conflict with the rules of IHL. And the draft principles do not purport to amend

the existing rules that apply to environmental protection in relation to armed conflict. As most armed conflicts nowadays are non-international in nature, the applicability of the draft principles to such conflicts is crucial for environmental protection. The challenge is to induce non-State armed groups to respect such obligations in the event of conflict and be held responsible for any breaches thereof.

Situations of foreign occupation are part of international armed conflict and this is well-established under international law. The inclusion of a dedicated part of the draft principles to those that apply in situations of occupation does not change their nature as international armed conflicts, as has been reiterated in the commentaries. To strengthen environmental protection during occupation it was important that the ILC included in the project principles that apply specifically to such situations.

Now, I turn to specific comments on the draft principles: **On draft principle 3:** My delegation supports the proposition

that, under the principle, states are only required to take effective measures in implementation of their existing international obligations, and not beyond such obligations. If the draft principles proposed as *lex ferenda* develop to become *lex lata*, then they become part of the States' obligations pursuant to which States must take the relevant measures.

My delegation welcomes draft principle 8 on human displacement, and the need for States, IOs and other relevant actors to take appropriate measures towards the environment in areas where persons displaced by armed conflict are located. Human displacement as a result of conflict has a major environmental impact in such areas. My delegation does not see the inclusion of draft principles on State responsibility and non-prejudice clauses on the responsibility of other actors as necessary. Instead, the Commission should have tackled the problem of attribution of environmental damage in the event of

armed conflict, which remains complex and illusive in international environmental claims.

On the prohibition of pillage of natural resources, we would like to reiterate that his prohibition apples to both private acts as well as acts by the occupying authority.

On part four on occupation, we welcome the use of the terms “protected persons” and “protected population” as terms of art under the international humanitarian law instruments. Such terms are interchangeable, although it seems more appropriate to use the first in draft principle 19 and the second in draft principle 20. Even the term “population of the occupied territories” excludes the population of the occupying power that is transferred to the occupied territory.

On draft principle 20: This principle is a reflection of the existing rules in the sustainable use of natural resources of the occupied territory. There is no conflict between the principle and article 55 of the 1906 Hague Regulations. The use by the

occupying power of such natural resources must be for the benefit of the protected populations, and for other lawful purposes. Such lawful purposes must benefit such protected population.

Thank you