



**PERMANENT MISSION OF THE REPUBLIC OF  
SIERRA LEONE TO THE UNITED NATIONS**

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**Statement**

by

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at the 77<sup>th</sup> Session of the United Nations General Assembly

Agenda item 77:

**“Report of the International Law Commission on the work of  
its seventy-third session”**

**Cluster I:**

*Chps: I, II, III, IV (Peremptory norms of general international  
law (jus cogens)), V (Protection of the environment in  
relation to armed conflicts) and X (Other Decisions)*

New York, 26<sup>th</sup> October 2022

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## Chair,

1. The delegation of Sierra Leone welcomes the debate on agenda item: "*Report of the International Law Commission on the work of its seventy-third session*", being the last session in this present quinquennium.
2. We also welcome to New York Members of the International Law Commission ("Commission" or "ILC"), and Legal Advisers from capitals to this year's International Law Week. It is a delight that this rich tradition of extensive engagement between the Sixth Committee, legal advisers and Members of the Commission continues in an in-person format, as we learn to live with the Corona virus disease (COVID-19) pandemic.
3. Sierra Leone aligns this statement with the statement delivered on behalf of the African Group.
4. We thank the Chair of the Commission for the 73<sup>rd</sup> session, **Mr. Dire Tladi of South Africa**, for introducing the Commission's report **A/77/10**. As an African State representative, it really gives me great delight to have both the Chair of the ILC and the Chair of the Sixth Committee, who was also a Member and Chair of the Commission, lead the work of both bodies, particularly at this consequential time for the international community.
5. Sierra Leone congratulates the Commission on the progress made on the various topics discussed in the report. We thank the Codification Division of the Office of the Legal Affairs for their excellent Secretariat work for both the Commission and the Sixth Committee, as well as for the extended briefings in September of Sixth Committee delegates on the work of the ILC's 73<sup>rd</sup> session. The second engagement with the Special Rapporteurs is a welcome addition and we join the African Group in expressing our full support for its continuation, punctuating the importance of the interaction between the Sixth Committee and members of the Commission.

**Chair,**

6. In this difficult moment, when the multilateral international legal order is under tremendous stress, Sierra Leone takes this opportunity to reaffirm the great value and importance we attach to the mandate of the Commission in assisting the General Assembly in initiating studies and making recommendations for the purpose of promoting the “progressive development of international law and its codification” as set out in the Commission's 1947 Statute, derived from article 13 (1) (a) of the United Nations Charter.
7. We also reiterate and re-echo the view of the African Group in that the process of progressive development and codification of international law must always be inclusive and all-embracing in the consideration of law texts, State practice, precedents and doctrines as required by the ILC Statute. Efforts in that regard ought to also draw inspiration from the main principal legal systems of our contemporary and pluralistic world, including African customary law as it relates to international law.
8. Sierra Leone's continued active engagement with the work of the Commission, despite the pronounced challenges for small delegations, is to ensure these important objectives are duly realised. Sierra Leone remains committed to multilateralism and the rules-based international legal system, and we value the effective contribution of the Commission in maintaining this multilateral system, with due consideration given to the views of all Member States.

**Chair,**

9. Within the hybrid-format adopted to deal with the continuing challenges of the COVID-19 Pandemic, the report certainly demonstrates that the Commission was very busy and productive, with the consideration of six (6) substantive topics, namely: “Peremptory norms of general international law (*jus cogens*)”, “Protection of the environment in relation to armed conflicts”, “Immunity of State officials from foreign criminal jurisdiction”, “Succession of States in respect of State responsibility”, “General

principles of law”, and “Sea-level rise in relation to international law”.

10. Sierra Leone congratulates and commends the Commission, and its Members, and pays tribute to **Special Rapporteur Mr. Dire Tladi**, on the adoption, on second reading, of the entire set of draft conclusions on “identification and legal consequences of peremptory norms of general international law (*jus cogens*)”, comprising 23 draft conclusions and an annex containing a non-exhaustive list of *jus cogens* norms, together with commentaries thereto.
11. Sierra Leone commends the Special Rapporteur and acknowledges the steps taken by the Commission to consider the statements of delegations in the Sixth Committee with the same or equal value to written submissions, as invited between the First and Second Readings of the topic by the Commission. We had previously made preliminary observations on the topic, and on the adoption of the Draft Conclusions, the Annex and commentaries, after the First Reading, and we now wish to highlight the following:
12. **First**, Sierra Leone takes note of the recommendation of the Commission in paragraph 41 of its report, and as we continue to study the adopted draft conclusions, annex and commentaries, my delegation takes this opportunity to state that the conclusion of the work of the Commission, constitutes a significant development, and an accomplishment on a very important topic of international law. We note that this was done under the guidance of an African jurist.
13. **Second**, Sierra Leone agrees with the decision to **change the title** of the topic to “Draft Conclusions on the Identification and Legal Consequences of Peremptory Norms of General International Law”, which clearly describes the scope and purpose of the Draft Conclusions, as recommended by the Drafting Committee based on a suggestion made by the Republic of Italy.
14. **Third**, the compromise reached on **Draft Conclusion 2**, in both placement and the further clarification of the meaning, by splitting

the two into two sentences was appropriate. Indeed, we appreciate the first sentence as explaining that peremptory norms reflect and protect fundamental values of the international community, which is important for my delegation; and the second sentence explains that these peremptory norms are universally applicable and superior to other rules of international law.

15. **Fourth**, and similarly on **Draft Conclusion 5, “bases” for *jus cogens***, the delegation of Sierra Leone took note of the helpful debate on retaining the text of the first paragraph of this Draft Conclusion at First Reading, that is, whether to change “basis” and “bases” to “source” and “sources.” The preferences and outcome is well noted, and significantly, since the Commission has commended the draft conclusions and annex, together with the commentaries, to the attention of States and to all who may be called upon to identify *jus cogens norms* and to apply their legal consequences, the clarification was needed in order to avoid any confusion with “sources of law” in the application of the Draft Conclusions.
16. **Fifth**, on **Draft Conclusion 7**, “International Community of States as a Whole” we take note of the Commission’s agreement with the Special Rapporteur’s suggestion in his *Fifth Report* to add the phrase “and representative” to describe the type of majority needed to meet the acceptance and recognition requirement, with the Special Rapporteur further agreeing to elaborate on the issue in the commentary. Significantly for us, the Commission decision not to take steps that might blur the boundary between customary law and *jus cogens* was significant, underlining the substantive differences between those two topics.
17. And this takes us to our **Sixth** point on **Draft Conclusion 14**, rules of customary international law conflicting with a *jus cogens* norm. Note is taken of the approach of the Commission to address States’ concerns regarding **paragraph 1 of Draft Conclusion 14**, relating to how an emerging rule of customary law could conflict with an existing peremptory norm, with the change from “if it conflicts” in the First Reading to “if it would come into conflict,” upon Second Reading. The further approach to address the concerns of the

stifling of the emergence of new peremptory norms of general international law, to preclude the emergence of a new rule of customary law that runs contrary to an existing peremptory norm, as well as the further clarifications in the commentaries, are also well noted.

18. Seventh, on **Draft Conclusion 16**, my delegation is satisfied with the underlining factor that no State has contested the substance of the legal principle that Security Council decisions were also subject to *jus cogens* norms. We agree that the language “obligations created by resolutions, decisions or other acts of international organizations conflicting with a *jus cogens* norm” is broad enough to cover the United Nations Security Council. The retention of the reference to the UN Security Council in the commentary is helpful to further clarify this issue, as this is in keeping with State practice, which favours the Draft Conclusion and the commentary.
19. **Eight**, the debate in the Commission on **Draft Conclusion 19** particular consequences of serious breaches of *jus cogens* norms was necessary, and appears to have assisted with clarity on the use of the word “serious” in **Draft Conclusion 19** in that all breaches of *jus cogens* norms have legal consequences (such as the duty of cessation and reparation), but *serious* breaches carry more specific obligations, such as that of cooperation among States to bring an end to the breach and the duty of non-recognition. Although “Seriousness” was not defined in paragraph 3, it is noted that it was elaborated upon in the commentary.
20. Tenth and finally, on **Draft Conclusion 23, the final draft conclusion and Annex**. My delegation had previously expressed support for the approach taken on the illustrative list of *jus cogens* norms, and we make the point that in our view, any exclusion is not prejudicial to the status of *jus cogens* norms not on the illustrative list or any emerging peremptory norms. The illustrative list of norms reflects, in our view, important *jus cogens* norms including the prohibition of the use of force and the right of self-determination of all peoples.

**Chair,**

21. Similarly, to the *jus cogens* topic, Sierra Leone also commends the Commission, and its Members, and pays tribute to the Special Rapporteur **Ms. Marja Lehto** of **Finland** on the adoption on second reading, the entire set of draft principles on protection of the environment in relation to armed conflicts, comprising a draft preamble and 27 draft principles, together with commentaries thereto. We join the Commission to express our gratitude for the valuable contribution of the previous Special Rapporteur, **Ms. Marie Jacobsson** of **Sweden** to the work on the topic.
22. Sierra Leone takes note of the recommendation of the Commission in paragraph 55 of its report, and as we continue to study the preamble and 27 draft principles, together with the commentaries, we hereby make the following preliminary observations:
23. **First**, as a policy matter, Sierra Leone fully supports the scope of the draft principles in their application to the protection of the environment before, during or after an armed conflict, including in situations of occupation as contained in **Draft Principle 1**; and the purpose expressed in **Draft Principle 2**, in that they are *“aimed at enhancing the protection of the environment in relation to armed conflicts, including through measures to prevent, mitigate and remediate harm to the environment”*.
24. Further, in reference to the need to take into consideration diverse views and practice on ILC topics, we note the use of African normative instruments in this field, including the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the “Kampala Convention”), which proved to be relevant in aspects of the discussions in the reports of the Special Rapporteur and in the debates of the Commission.
25. **Second**, on **Draft Principle 4**, my delegation noted that the Commission discussed the different wording proposals that were aimed at avoiding the implication that there was a cumulative requirement that the referenced area had to be both

environmentally and culturally important in order to be protected. We further note that the proposals included deleting the word “major” from the phrase “areas of major environmental and cultural importance” as well as adding the phrase “in relation to armed conflict” or “in event of armed conflict.” We are, at this stage, content with the reading of the draft principle which states as follows: “*States should designate, by agreement or otherwise, areas of environmental importance as protected zones in the event of an armed conflict, including where those areas are of cultural importance.*”

26. **Third**, on **Draft Principle 9**, “State Responsibility”, we noted that the Commission debated the utility of paragraph 1. We certainly side with the Commission’s decision to retain paragraph 1, without changes. We take note of the compromise struck on **paragraph 2 of Draft Principle 9** with the without prejudice language in reference to the rules on the responsibility of States or international organizations for internationally wrongful acts. This approach was similarly adopted for **Paragraph 3** to cover: a) the rules on the responsibility of non-state armed groups; and b) the rules on individual criminal responsibility. While it might have been useful for the Commission to take a position on these matters, given the relevance of both non-state actors and individuals to questions of responsibility, the approach of a without prejudice clause can be seen as understandable.

27. **Fourth**, on **Draft Principle 10**, reformulated to delete the words “legislative and other” before the word “measures”, to read “States should take appropriate measures”, in our view, takes care of the concern that differences in legal systems allow States to achieve the desired impact of the Draft Principle with or without legislation, and take into account legislation in place that covers the relevant issues. With the importance of ensuring enhancement of the existing obligations of States, the decision to elaborate on what is meant by “appropriate measures”, to encompass a variety of measures States can take, such as legislative, administrative and judicial is helpful for clarity. The clarity provided with reference to the phrase contained in the first reading text “an area of armed conflict or in a post-armed conflict situation” being replaced with



“an area affected by an armed conflict” is also helpful, and we note that it is inspired by the terms used in, inter alia, the United Nations Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

28. **Fifth**, and in **Part Three** on “**Principles applicable during armed conflict**”, the Commission extensively debated the use of the terms “natural environment” and “environment”. We note the agreement for the deletion of the word “natural” when referring to the environment in **Draft Principles 13, 14** and **15**. This may have been a pragmatic approach, to focus attention on the principles and not on the difference of views on the terms “environment” and “natural environment”. The understanding in this regard is significant, in that, by the deletion, the Commission did not intend to alter the scope of the existing conventional and customary international humanitarian law, nor the Commission attempting to expand the scope of what is meant by “natural environment” in international humanitarian law, with the commentary explaining this understanding.
29. Sixth and finally on this topic, on **Draft Principle 13, “General Protection of the Environment During Armed Conflict”**, and in relation to the new **paragraph 2** which was proposed by the Special Rapporteur, in response to State comments, appears to be an important addition. As the paragraph reads: *“The use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the environment is prohibited”*. It is hard to understand why the paragraph was objected to when no reference was made to any specific weapon, or not necessarily about weapons at all. Second, this prohibition already exists in Additional Protocol I. As argued by the Special Rapporteur, not including it in a set of principles specifically addressing the protection of the environment in relation to armed conflicts would have casted a shadow on the existing prohibition. Although the new text of paragraph 2 is comprised of two subparagraphs, we agree with the view that the bifurcation provides more clarity on the normative nature of the provision.

**Chair,**

30. Similar to the African Group, in our statement last session, we noted that as the Commission has concluded a number of topics on the Commission's current agenda, we recalled our statement on the issue of equitable geographical representation in the work of the Commission and noted that only one African member was serving as a special rapporteur, and another as co-chair of a study group. We called on the Commission, when deciding to add new topics, to consider a balanced approach to topics in terms of interest as well as in the selection of special rapporteurs. This was to assist enhance the legitimacy of the Commission's work.
31. On this note, taking into account the need for new topics, Sierra Leone welcomes the decision of the Commission to include the following topics on its programme of work: **(a)** "Settlement of international disputes to which international organizations are parties", appointing **Mr. August Reinisch** of **Austria** as Special Rapporteur; **(b)** "Prevention and repression of piracy and armed robbery at sea", appointing **Mr. Yacouba Cissé** of **Cote d'Ivoire** as Special Rapporteur; and **(c)** "Subsidiary means for the determination of rules of international law", appointing **Mr. Charles Chernor Jalloh** of **Sierra Leone** as Special Rapporteur. Sierra Leone looks forward to further engagement with the Commission on these topics and urges all delegations to be responsive to the requests for information on specific issues on which comments would be of particular interest to the Commission as contained in Chapter III of the report of the Commission to the General Assembly.
32. Although my delegation appreciates the Commission's decision to add the afore-mentioned topics to its current agenda, and we understand that the process of adding new topics depends on various considerations, we note that the topic of "Universal Criminal Jurisdiction" is still in the long-term programme of work despite the wide support expressed by member States for it to be added to the Commission's current agenda. It appears that the Commission is being deferential to the Sixth Committee, even though it can independently exercise its mandate, which could even help end the political impasse by returning our collective focus on clarifying

the legal gaps in the universality topic. My delegation also notes that the topic “Extraterritorial Jurisdiction”, included in the Commission’s long-term programme of work in 2006 is yet to be added to the current agenda. It may be recalled that the topic “Jurisdiction with regard to crimes committed outside national territory” was part of the 1949 list of fourteen topics, and for which the topic of “The Obligation to Extradite or Prosecute (*aut dedere aut judicare*)” is thought to be within its scope. The Commission, therefore, could strive for completeness and perhaps avoid the political debate in the Sixth Committee by combining those topics and studying the wider issue of “Jurisdiction.” That might then allow it to comprehensively clarify the various legal challenges arising from the extraterritorial application of criminal jurisdiction.

33. On the long-term programme of work, Sierra Leone takes note of the decision of the Commission to place on the said long-term programme the topic “non-legally binding international agreements”, based on a proposal by **Mr. Mathias Forteau of France**.

34. In our statement on agenda Item: 80 “*Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm*”, my delegation made reference to the issue of the Working Methods of the Sixth Committee and how the steps we take as a Committee to act on the recommendations of the Commission, can be complemented by the ILC’s examination of its own working methods, following the re-establishment of the Working Group on methods of work of the Commission, and the receipt of working papers on, *inter alia*, “*the relationship with other bodies, including the Sixth Committee...; and nomenclature relating to the outcomes of the Commission’s work*”. We noted that the Working Group did not produce a substantive report but will continue its work in this regard in the next quinquennium. Accordingly, we would urge for clear view by the Commission on the value of the nomenclature relating to the outcomes of its work and look forward to additional consideration of the other important issues mentioned in the report and that have been under discussion by the working group over the past few years.

35. In closing, **Chair**, Sierra Leone uses this opportunity to highlight and welcome progress on other aspects of the work of the Commission. In this regard, Sierra Leone takes great interest in paragraph 263 of the report concerning a possible role for the Commission in strengthening the current international legal framework on pandemic preparedness and response, in line with article 17 of its Statute, which allows for topics to be referred to it for further consideration.
36. Second, as regards paragraph 281 of the report, we commend the decision to hold one half session of the next quinquennium here in New York. Such a meeting would be beneficial in promoting greater interaction with member States and may well assist in possibly strengthening the relationship with the Sixth Committee. Toward that end, it is vital that all members from all regional groups are able to access meetings of the Commission with the relevant facilitation by the Secretariat and host State.
37. Third, we welcome the additional information provided at paragraph 285 in response to the General Assembly request at paragraph 34 of Resolution 76/111 dated 9 December 2021 and contained in Annex II of the report for a trust fund to assist special rapporteurs of the Commission especially those from developing countries. This stop gap measure allows special rapporteurs the opportunity to undertake the research for the preparation of their reports, and significantly, would address a major structural problem that might otherwise imbalance the distribution of special rapporteurships in the Commission and undermine the legitimacy of its work. Yet, and we wish to underline this even as we support the establishment of a trust fund, it is vital to maintain the independence of the Commission that, as per the proposed terms of reference at paragraph 13, financial contributions shall not be earmarked under any circumstances for any specific activity by the Commission or its Special Rapporteurs or Chairs of its Study Groups.
38. Fourth, we welcome the continuing live webcast of the plenary meetings of the Commission, and availability of the recorded videos online, which in our view, has certainly improved

accessibility to the work of the Commission. This innovation is useful for delegations and should be continued. We look forward to the Commission making further progress on the accessibility of its work.

39. Finally, Sierra Leone appreciates the dedication of the members of the Commission and the Secretariat, who despite the continuing challenges of COVID-19, made the personal sacrifices which enabled the Commission to resume its work in a hybrid format. That said, as in-person interactions both formally and informally are critical to progress the work, we underline the importance of resuming the usual working methods of the Commission on the normal schedule and in person meetings.
40. As this is the end of the current quinquennium, we use this opportunity to thank all the members of the Commission for their devoted service and contributions to the codification and progressive development of international law. For members serving their final term, Sierra Leone extends her very best wishes in all your other endeavours. We most heartily congratulate our returning and newly elected members for the next quinquennium. We certainly join the African Group in expressing our satisfaction with the quality of the elected members of the Commission, as we celebrate the election of the first African female member, **Ms. Phoebe Okowa** of **Kenya**.
41. I thank you.