Statement by the Republic of Cyprus

Report of the International Law Commission [item 77]
Chapter IV: Peremptory norms of general international law (Cluster I)
Chapter V: Protection of the environment in relation to armed conflicts (fCluster I)
Sixth Committee, 77th UN General Assembly, 27 Oct. 2022

Mr. Chairman,

My delegation would like to thank Mr. Dire Tladi, the Chair of the International Law Commission for the presentation of the Commission's report, and to express its gratitude to the members of the Commission for their valuable work during this year. The Republic of Cyprus has consistently supported the work of the International Law Commission and continues to attach great importance to its contributions to the codification of international law.

On **Chapter IV: "Peremptory norms of general international law (*jus cogens*)",** Cyprus welcomes the adoption, on second reading of the entire set of draft Conclusions on identification and legal consequences of peremptory norms of general international law comprising of 23 draft Conclusions and an annex, together with commentaries thereto, and we express our appreciation to the Special Rapporteur, Mr. Dire Tladi for his work and outstanding contribution. Cyprus wishes to make a few substantive remarks on Chapter IV:

First, on the nature of the peremptory norms of international law, Cyprus underscores the importance of the draft Conclusion 2, Commentary 10 on the universal applicability of peremptory norms and the clarification that the norms are binding on all subjects of international law that they address, including states and international organizations.

Second, Cyprus agrees with the observance on draft Conclusion 5, Commentary 4, that customary international law is the most common source for the peremptory norms of general international law. Cyprus also agrees with the recognition of the special character of the UN Charter emphasized in Commentary 8, which makes reference to the ILC's commentary to draft article 50 of the 1966 draft articles on the law of treaties and identifies that "the law of the Charter concerning the prohibition of the use of force" is a "conspicuous example of the rule of international law having the character of *jus cogens".*

Third, consistent with the views expressed by my delegation during previous sessions, Cyprus agrees with draft Conclusion 10, Commentary 1 that, as a general rule, a treaty becomes void as a whole if it conflicts with a peremptory norm of general international law, such as the prohibition of the use of force.

Fourth, Cyprus agrees with draft Conclusion 19, Commentary 5 that the principle of self-determination is a *jus cogens* norm. It is emphasized that the principle of self-determination became a principle of international law in the course of the decolonization movement, and that it has always been applied to situations of colonial rule or foreign occupation. The 1970 United Nations General Assembly Resolution 2625 on Friendly Relations, states that "*Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.*"[1] Furthermore, the Helsinki Final Act passed by the Conference on Security and Cooperation in Europe in 1975 states that "[*The participating] States will respect the territorial integrity of each of the participating States. Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State"*.[2] Thus, the integrity of all boundaries, post-self-determination and otherwise, has been reinforced by the development of the rule that boundaries may not be altered by any use of force. Self-determination and the principle against partition meet the characteristics of norms considered as *jus cogens* based on Draft Conclusion 4 of the Second Report by the Special Rapporteur, insofar as they are "norm[s] of general international law," and are "accepted and recognized by the international community of States as a whole as … norm[s] from which no derogation is permitted."

The obligation of states to cooperate to bring to an end through lawful means any serious breach by a State of a peremptory norm of general international law is a general obligation under customary international law, according to Article 41(1) of the draft articles on Responsibility of States for Internationally Wrongful Acts. However, Cyprus appreciates the inclusion in the report of a reference to the ICJ advisory opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, which reaffirmed that there is an obligation to cooperate to bring to an end to breaches of "obligations to respect the right … to self-determination, and certain … obligations under international humanitarian law". The ICJ reaffirmed that one of the obligations arising from the breaches of such obligations was an obligation on other States "while respecting the [Charter of the United Nations] and international law, to see to it that any impediment, resulting from" the breaches are "brought to an end".[3] This principle was also affirmed in the ICJ advisory opinion on the *Legal Consequences of the Separate of the Chagos Archipelago from Mauritius.*

Furthermore, Cyprus agrees with draft Conclusion 19, Commentary 12, based on article 41, paragraph 2, of the ILC draft Articles on the Responsibility of States for Internationally Wrongful Acts, which contains the obligation not to recognize as lawful situations created by a serious breach of a peremptory norm of international law and the obligation not to render aid or assistance in maintaining the situation created by the serious breach of a peremptory norm of general international

[1] A/RES/25/2625 (XXV), UN General Assembly, Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970.

[2] Article IV, Final Act of Helsinki, Organization for Security and Co-operation in Europe (OSCE), 1 August 1975.

[3] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004,* ¶ 155; *see also* Report of the International Law Commission, A/77/10 (Advanced version of 12 August 2022), p. 71.

law. The role of the Security Council and the General Assembly is emphasized in Commentary 14 in connection with the obligation not to recognize a situation created by a breach of peremptory norm of general international law, such as an illegal annexation of an occupied territory or any illegal secessionist act in an occupied territory as a result of foreign aggression.

Fifth, draft Conclusion 14, Paragraph 3, addresses the non-applicability of the so-called persistent objector principle to peremptory norms of general international law (*jus cogens).* Cyprus agrees with Commentary 10, which stipulates that such a concept does not apply to peremptory norms of general international law and that it flows from both the universal application and hierarchical superiority of *jus cogens* as reflected in Draft Conclusion 2. The doctrine would undermine the immutability and universal application of *jus cogens* norms and would subvert the very definition of *jus cogens* norms as norms "from which no derogation is permitted". Indeed, Cyprus is aligned with the position taken by the United Kingdom in the *North Sea Continental Shelf Cases* whereby the UK argued that, "where a fundamental principle is concerned, the international community does not recognize the right of any State to isolate itself from the impact of the principle."[4]

As the ICJ held in the *North Sea Continental Shelf Cases*, "customary law rules and obligations […] by their very nature, must have equal force for all members of the international community, and cannot therefore be the subject of any right of unilateral exclusion exercisable at will by any one of them in its own favour."[5] When it comes to *jus cogens* norms, which are deemed hierarchically superior to other rules and norms of international law, the argument that the concept of persistent objector should not apply to them is even more compelling. In espousing this view, Cyprus joins other Member States, which have expressed similar positions and that have called for further discussions on this topic.[6]

Sixth, with concern to draft Conclusion 23, my delegation takes particular note that the list of norms that the Committee has included in the annex is non-exhaustive and without prejudice to the existence or subsequent emergence of other peremptory norms of general international law (*jus cogens*) as also mentioned in the commentaries thereto.

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[4] *Fisheries (United Kingdom v. Norway)*, Reply of the United Kingdom (28 November 1950), Pleadings, vol. II, p. 429.

[5] *North Sea Continental Shelf Cases* (*Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands*), I.C.J. Reports (20 February 1969).

[6] *See, e.g.,* Finland (on behalf of the Nordic countries) (A/C.6/73/SR.24, ¶ 126); Greece (A/C.6/73/SR.27, ¶ 9); Malaysia (*ibid.*, ¶. 104); Portugal (A/C.6/73/SR.26, ¶ 119); South Africa (A/C.6/73/SR.27, ¶ 46); Thailand (A/C.6/73/SR.26, ¶ 96); the United Kingdom of Great Britain and Northern Ireland (A/C.6/73/SR.22, ¶ 84); and the United States of America (A/C.6/73/SR.29, ¶ 34); Statement of Mr. Park, ILC Provisional summary record of the 3316th meeting (7 July 2016) (Mr. Park "agreed with the Special Rapporteur that the doctrine of the persistent objector was not applicable to jus cogens and believed that any such possibility should be categorically excluded."); Statement of Mr. Petric, ILC Provisional summary record of the 3322th meeting (18 July 2016) ("A priori, his response to the questions of whether regional *jus cogens* might exist and whether the persistent objector rule could be applied to jus cogens would thus be a categorical "no", but he did not exclude the possibility of considering those questions at a later stage, as envisaged by the Special Rapporteur."); Statement of Mr. Vazquez-Bermudez, ILC Provisional summary record of the 3322th meeting (18 July 2016) ("He fully agreed that jus cogens norms were, by their very nature, incompatible with the doctrine of the persistent objector. It was inconceivable, for instance, that a State could evade the prohibitions of genocide or of crimes against humanity because it had persistently opposed them, since that would be tantamount to allowing it to flout the fundamental values and essential interests of the international community as a whole without facing any legal consequences whatsoever.").

Mr. Chairman,

On **Chapter V: Protection of the environment in relation to armed conflicts,** Cyprus welcomes the adoption by the Committee of the entire set of draft principles, on second reading, taking into account the comments and observations of Governments, together with a preamble and commentaries, and would like to express its appreciation to the Special Rapporteur Ms. Maria Lehto for her work and valuable contribution. Cyprus wishes to make the following observations:

First, on the principles of general application.

On Principle 7: Peace operations

As noted in the Commentary of Principle 7, peace operations directly relate to armed conflicts, as many peace operations were deployed over the course and/or following the end of hostilities and the signing of a peace agreement. Cyprus would like to highlight the concern shared by the High-level Independent Panel on Peace Operations. Today, many missions operate in environments where no such political agreement exists, or where efforts to establish one have failed.[7] As such, it is vital that any ongoing[8] and future UN peacekeeping missions are multidimensional and comprehensively address peacebuilding activities in their host countries —from providing secure environments to monitoring human rights or rebuilding the capacity of a State and to ensuring the protection of civilians.[9]

On Principle 9: State responsibility

The ILC Report correctly points out in Commentary 4 that "the law of armed conflict extends the responsibility of a state party to an armed conflict to 'all acts committed by persons forming part of its armed forces'. As far as the law on the use of force is concerned, a violation of Article 2, paragraph 4, of the Charter of the UN entails responsibility for damage caused by that violation whether or not resulting from a violation of the law of armed conflict." Cyprus would like to highlight the Report's finding that a further basis for responsibility for conflict-related environmental harm in situations of occupation can be found in international human rights obligations.[10] In

[7] Report of the High-level Independent Panel on Peace Operations on uniting our strengths for peace: politics, partnership and people (contained in A/70/95-S/2015/446), ¶ 23.

[8] *See* Security Council Resolution 2646 (2022) [on extension of the mandate of the UN Peacekeeping Force in Cyprus (UNFICYP) until 31 January 2022].

[9] Report of the International Law Commission, A/77/10 (Advanced version of 12 August 2022), p. 114.

[10] Indeed, the degradation of environmental conditions may result in the violation of specific human rights as has been reflected in the jurisprudence of regional human rights courts and human rights treaty bodies. *See Yanomami v. Brazil*, Case No. 12/85, Inter-American Commission on Human Rights, resolution No. 12/85, Case No. 7615, 5 March 1985; *Öneryildiz v. Turkey*, Application No. 48939/99, Judgment, European Court of Human Rights, 30 November 2004, ECHR 2004-XII; *Powell and Rayner v. the United Kingdom*, Application No. 9310/81, Judgment, European Court of Human Rights, 21 February 1990; *López Ostra v. Spain*, Application No. 16798/90, Judgment, European Court of Human Rights, 9 December 1994; *Guerra and Others v. Italy*, Application No. 116/1996/735/532, Judgment, European Court of Human Rights, 19 February 1998*; Fadeyeva v. Russia*, Application No. 55723/00, Judgment, European Court of Human Rights, 9 June 2005; *Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Federal Republic of Nigeria*, African Commission on Human and Peoples' Rights,

situations of occupation, the "Occupying Power" is responsible for acts in violation of human rights law or the law of armed conflict even when they are committed by private actors, unless it can establish that the particular injury occurred notwithstanding its due diligence in seeking to prevent such violations.[11]

On Principle 10: Due diligence by business enterprises

Cyprus recommends that the Committee consider adding the following phrase to the current language of Principle 10:

> States should take appropriate measures aimed at ensuring that business enterprises operating in or from their territories, or territories under their jurisdiction, **including where the business enterprises are operating in unlawfully occupied territories effectively controlled by Occupying States,** exercise due diligence with respect to the protection of the environment, including in relation to human health, when acting in an area affected by an armed conflict. Such measures include those aimed at ensuring that natural resources are purchased or otherwise obtained in an environmentally sustainable manner.[12]

On Principle 11: Liability of business enterprises

Similarly, with regards to Principle 11, Cyprus proposes to add the following language:

> States should take appropriate measures aimed at ensuring that business enterprises operating in or from their territories, or territories under their jurisdiction **or effectively controlled by Occupying States**, can be held liable for harm caused by them to the environment, including in relation to human health, in an area affected by an armed conflict. Such measures should, as appropriate, include those aimed at ensuring that a business enterprise can be held liable to the extent that such harm is caused by its subsidiary acting under its *de facto* control. To this end, as appropriate, States should provide adequate and effective procedures and remedies, in particular for the victims of such harm.[13]

Second, on the principles applicable during armed conflict.

On Principle 18: Protected zones

The current language refers to tangible culture heritage as well as intangible culture. Cyprus proposes that Principle 18 also captures the importance of ***natural*** **heritage**, which includes culturally

Communication No. 155/96 (2002), paras. 64–66, *available at* https://www.escr-net.org/sites/default/files/serac.pdf (accessed on 22 July 2022). *See* R. Pavoni, "Environmental jurisprudence of the European and Inter-American Courts of Human Rights: comparative insights", in B. Boer, *Environmental Law Dimensions of Human Rights* (Oxford, Oxford University Press, 2015), pp. 69–106.

[11] Report of the International Law Commission, A/77/10 (Advanced version of 12 August 2022), pp. 121-122.

[12] *Id.*, p. 125.

[13] *Id*, p. 131.

significant landscapes, geological, biological, and physical formation. It is salient that the scope of the ILC Report reflects the evolution of cultural and natural heritage since the adoption of the World Heritage Convention[14] and the important work carried out by UNESCO, the International Criminal Court, and other international and regional organizations.[15]

As such, Cyprus recommends adding the wording of "and/or constitutes natural heritage" to Principle 18 as follows:

> An area of environmental importance, including where that area is of cultural importance **and/or constitutes natural heritage**, designated by agreement as a protected zone shall be protected against any attack, except insofar as it contains a military objective. Such protected zone shall benefit from any additional agreed protections.[16]

Third, on the principles applicable in situations of occupation.

With respect to Commentary 3 of "Part Four: Principles applicable in situations of occupation" of the Report, Cyprus proposes the additional language that the "Occupying Power **shall not** engage in any maritime exploration or extraction of occupied land and maritime zones."

On Principle 19: General environmental obligations of an Occupying Power

Cyprus wishes to recall Paragraph 1 of Draft Principle 19, which sets forth the general obligation of an Occupying Power to respect and protect the environment of the occupied territory and to take environmental considerations into account in the administration of such territory. The provision is based on the Occupying Power's obligation to take care of the welfare of the occupied population, derived from article 43 of the Hague Regulations, which requires the Occupying Power to re-establish and insure, as far as possible, public order and security in the occupied territory.[17]

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[14] *See* European *Parliament*, Briefing, Cultural Heritage in EU Policies, *available at* https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621876/EPRS_BRI(2018)621876_EN.pdf.

[15] *See, e.g.*, European Parliament, Briefing, Cultural Heritage in EU Policies, *available at* https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621876/EPRS_BRI(2018)621876_EN.pdf; International Criminal Court, Policy on Cultural Heritage (June 2021), *available at* https://www.icc-cpi.int/sites/default/files/itemsDocuments/20210614-otp-policy-cultural-heritage-eng.pdf.

[16] Report of the International Law Commission, A/77/10 (Advanced version of 12 August 2022), pp. 153-154.

[17] Hague Regulations, art. 43: "The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." The authentic French text of article 43 uses the expression "l'ordre et la vie publics", and the provision has been accordingly interpreted to refer not only to physical safety but also to the "'social functions and ordinary transactions which constitute daily life', in other words, to the entire social and economic life of the occupied region". *See* M. S. McDougal and F.P. Feliciano, Law and Minimum World Public Order: the Legal Regulation of International Coercion (New Haven, Yale University, 1961), p. 746. *See also* Dinstein, the International Law of Belligerent Occupation (footnote 724 above), p. 89, and Sassòli, "Legislation and maintenance of public order…". This interpretation is also supported by the travaux préparatoires: in the Brussels Conference of 1874, the term "vie publique" was interpreted as referring to "des fonctions sociales, des transactions ordinaires, qui constituent la vie de tous les jours". *See* Belgium, Ministry of Foreign Affairs, Actes de la Conférence de Bruxelles de 1874 sur le projet d'une convention internationale concernant la guerre, p. 23. *See generally* Report of the International Law Commission, A/77/10 (Advanced version of 12 August 2022), p. 158.

Cyprus further emphasizes that the term "applicable international law" refers, in particular, to the law of armed conflict, but also to international environmental law and international human rights law. Concurrent application of human rights law is of particular relevance in situations of occupation. The International Court of Justice has notably interpreted respect for the applicable rules of international human rights law as part of the obligations of the Occupying Power under article 43 of the Hague Regulations.[18] Where both the law of occupation and international human rights law regulate the same subject matter and share the same objective, the latter may provide clearer and more detailed regulation, which can still be adapted to the realities at hand.[19]

As for the application of international environmental law, reference can be made to the 1996 Advisory Opinion of the ICJ on *Legality of the Threat or Use of Nuclear Weapons*, which provides important support to the claim that customary international environmental law and treaties on the protection of the environment continue to apply in situations of armed conflict. Furthermore, to the extent that multilateral environmental agreements address environmental problems that have a transboundary nature, or a global scope, and the treaties have been widely ratified, it may be difficult to conceive of suspension only between the parties to a conflict. Obligations established under such treaties protect a collective interest and are owed to a wider group of States than the ones involved in the conflict or occupation.

On Principle 21: Prevention of transboundary harm

Cyprus acknowledges the significance of Principle 21, particularly with regards to Member States' obligation to prevent significant harm to the environment of other States – that has an established status in a transboundary context and has been particularly relevant with regard to shared natural resources, such as international watercourses and transboundary aquifers. This obligation is explicitly contained in the *Convention on the Law of the Non-navigational Uses of International Watercourses* and in the *Convention on the Protection and Use of Transboundary Watercourses and International Lakes* as well as in the *United Nations Framework Convention on Climate Change*.[20]

[18] Armed Activities on the Territory of the Congo, Judgment 2005, p. 231, ¶ 178. *See also id*., p. 243, ¶ 216, in which the Court confirms that international human rights agreements are applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory, "particularly in occupied territories". *See also Legal Consequences of the Construction of a Wall*, pp. 177–181, ¶¶ 102–113. The International Criminal Tribunal for the Former Yugoslavia, likewise, has stated that the distinction between a phase of hostilities and a situation of occupation "imposes more onerous duties on an occupying power than on a party to an international armed conflict." *See* Naletilić and Martinović, ¶ 214. *See also* the European Court of Human Rights: *Loizidou v. Turkey* (Preliminary Objections), Judgment, 23 March 1995, Series A, No. 310, ¶ 62, and Judgment (Merits), 18 December 1996 ¶ 52; *Al-Skeini and others v. United Kingdom* [Grand Chamber], Application No. 55721/07, Reports of Judgments and Decisions 2011, ¶ 94 (in which reference was made to the Inter-American Court of Human Rights case *Mapiripán Massacre v. Colombia*, Judgment, 15 September 2005, Series C, No. 134, in support of the duty to investigate alleged violations of the right to life in situations of armed conflict and occupation).

[19] Report of the International Law Commission, A/77/10 (Advanced version of 12 August 2022), pp. 159-160.

[20] Convention on the Law of the Non-navigational Uses of International Watercourses (New York, 21 May 1997)(Status of Multilateral Treaties Deposited with the Secretary-General, chap. XXVII), art.7; Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 17 March 1992), United Nations, Treaty Series, vol. 1936, No. 33207, p. 269, art. 2; United Nations Framework Convention on Climate Change, art. 1, ¶ 1. *See also* Convention for the Protection of the Ozone Layer, art. 1, ¶ 2; Convention on the Regulation of Antarctic Mineral

Numerous regional treaties establish corresponding obligations of prevention, cooperation, notification or compensation with regard to damage caused to rivers or lakes. The principle has also been confirmed and clarified in international and regional jurisprudence.[21]

Fourth, on the principles applicable after the conclusion of armed conflict.

On Principle 25: Relief and assistance

Lastly, with regards to Principle 25, Cyprus encourages the Commission to develop clearer guidelines to help promote and ensure the principle of relief and assistance. The purpose of draft Principle 25 is to encourage States to take appropriate measures aimed at repairing and compensating environmental damage caused during armed conflict. More specifically, it addresses relief and assistance in situations where the source of environmental damage is unidentified or reparation is otherwise not available.[22] Cyprus is also of the position that such guidelines should also take into account environmental damage cause by continued occupation, and remedial measures (such as the sharing of information and natural resources) should be an enumerated duty of the Occupying Power.

As such, Cyprus proposes the following amendment:

> When, in relation to an armed conflict **or continued occupation**, the source of environmental damage is unidentified, or reparation is unavailable, States and relevant international organizations should take appropriate measures so that the damage does not remain unrepaired or uncompensated, and may consider establishing special compensation funds or other forms of relief or assistance.

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We request that the Special Rapporteurs and the Commission address these matters, including the points raised in the previous debates, in its further work.

I thank you for your attention.

Resource Activities (Wellington, 2 June 1988), International Legal Materials, vol. 27 (1988), p. 868, art. 4, ¶2; Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 25 February 1991), United Nations, Treaty Series, vol. 1989, No. 34028, p. 309, art. 1, ¶ 2.

[21] Several of the cases in which the International Court of Justice has clarified environmental obligations have been related to the use and protection of water resources such as wetlands or river. For example, the joint cases Construction of a Road/Certain Activities Carried Out by Nicaragua in the Border.

[22] Report of the International Law Commission, A/77/10 (Advanced version of 12 August 2022), p. 180.