

Statement by Polister
Report of the International Law Commission on the
work of its seventy-third session (agenda item 1),
(24 October 2022)

Mr. Chair,

At the outset, allow me to thank the **Chair** of the International Law Commission for his briefing, and congratulate the members of the Commission for the exceptional work done by the Commission.

2. My delegation also takes issue with an **erratum** in the Report of the Commission on the recent session.

Mr. Chair,

3. When the ILC was created more than seven decades ago, most of the current UN members from global South had not yet achieved independence. At the time of the adoption of the UN Charter, modern international law was still in the process of development. The ILC's mandate was to develop a more comprehensive framework of international law.

4. It was against this background, and taking into account the codification movement which started in the 18th century, that Article 13(1) of the UN Charter, and subsequently the Commission's Statute, were adopted. The mandate of the Commission, set out in article 1 of the Statute, provided that it "shall begin its work on the promotion of progressive development of international law and its codification."

5. The so-called "Golden Era" of the 1950s witnessed the codification of several texts and the adoption of key instruments in the field of international law. This continued past work and the ILC produced outstanding work in various fields, including the various fields of international law, jurisdiction and immunities, the law of international organizations, international criminal law, the law of treaties, international liability, international law of the sea and the settlement of disputes.

Mr. Chair,

6. Despite its considerable work in the past, the Commission today is confronted with fresh challenges, in particular in such areas as resolution of disputes, the

composition, working methods and interaction with Member States.

7. My delegation believes that as a subsidiary organ of the UN General Assembly, the Commission should have in mind the goal of serving the UN Member States when selecting its members, prioritizing legal objectives that States urgently need answers to, and promoting the following methods: include as a number of unqualified States practice and take into account the need to balance between codification and progressive development of law. When it comes to important but contentious issues, which general consensus is likely to be achieved, bringing more coherence and clarity to

8. The membership of the ILC should be diversified, based on equitable geographic representation. Special Rapporteurs are central to the work of the ILC. There have been 63 Special Rapporteurs in the 50-year history of the ILC. Only 14 came from Asia and 10 from Africa. Most of the Special Rapporteurs have been from the global North and western countries. The ILC was established in 1947 for the purpose of transforming "Euro-centric international law" into a more equitable system which reflects the needs and interests of the global South.

12. We agree with the key elements of the definition for a peremptory norm in an draft conclusion, which follows:

Conclusion: We also concur with the characterization of peremptory norms of general international law as reflecting and protecting fundamental values of the international community, which are hierarchically superior to other norms of international law and are universally applicable. These norms are interconnected and must be read together.

13. We note with appreciation the identification of the "right of self-determination" in the non-exhaustive list of peremptory norms of international law in the draft conclusion.

Mr. Chair,

14. Unfortunately, since 1978, and in the absence of a sufficiently precise and legally grounded definition of terrorism, the Security Council has effectively transformed its counter-terrorism resolutions to "criminalize" certain acts under international law, including the right of self-determination. Operative Para 1 of General Assembly resolution 2649

(1970) Affirms the legitimacy of peoples under colonial and alien domination recognized as entitled to the right of self-determination, and that that right by any means at their disposal

15. Despite the early times of digital technology, the determination of the Internet and other digital tools in the garb of giving effect to UN resolutions is most rampant today in situations of conflict. Such discretionary legal tools are routinely used to crush legitimate civil and political rights of people through draconian curbs on fundamental freedoms, including through imposition of digital and physical lockdowns and indefinite curfews, in the name of

16. As the regulatory and supervisory functions of the UN in the field of counter-terrorism have expanded, the scope of its human rights obligations has also expanded, as well. In this regard, the principles of respect and observance of human rights set out in articles 1 to 31 of the UN Charter are not merely obligatory on member states but also bind the actions of all UN institutions and entities created and regulated by the UN Charter, including the Security Council.

17. Thus, for example, in the famous *Al Kadi case* the European Court of Justice potential clash between a Security Council resolution and the applicant's fundamental rights claimed by him, claimed Court to be *jus cogens*. These examples illustrate that conflicts between a Security Council resolution and *jus cogens* may arise. Therefore, a conflict between a Security Council resolution and *jus cogens* cannot be equated with a conflict between *jus cogens* and the UN Charter itself.

18. Against this background, the UN ICJ has rightly recognized that: "a resolution, decision or other act of an international organization that would otherwise have binding effect does not have such effect if it is in conflict with international law if and to the extent that they are in conflict with a peremptory norm" (Conclusion no. 16). This conclusion clearly covers Security Council resolutions.

19. Accordingly, we hope that the Security Council would ensure that its resolutions on counter-terrorism are not being misused by certain member states to place curb on fundamental freedoms of people, particularly those reeling under foreign occupation and alien domination. These people should continue to enjoy

protection guaranteed a...
interest...

I thank you.

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