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.

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 [illegible]

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

Mr. Chairman,

On **Chapter V: Protection of the environment in relation to armed conflicts,** Cyprus welcomes

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

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]

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