

Statement by

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Report of the International Law Commission

on the work of its seventy-third session Cluster I

Agenda Item 77

26 October 2022

Thank you Mr. Chairperson,

We would like to begin by thanking the Chairperson of the International Law Commission, Mr. Dire Tladi, for his report to the Sixth Committee, session. We are particularly grateful to the Chairperson of the Drafting Committee, Mr. Ki Gab Park, for all his hard work. We also sincerely thank the Codification Division of the Secretariat and its Director, Mr. Huw Llewellyn, for their excellent work.

With the present quinquennium drawing to a close, we would also like to extend a warm welcome to the newly elected members of the Commission, and wish them great success in the important role they are taking on.

Mr. Chairperson,

The International Law Commission plays an important role in making recommendations regarding the promotion of the progressive development of international law and its codification. Its ability to make effective recommendations which will be accepted by States will determine whether the Commission can strengthen what the preamble to the UN Charter refers to as obligations arising from treaties and other sources of international law can be maintained. States and the Commission share the responsibility for achieving such dialogue with States holds the key to its ability to fulfil its mandate.

It is in this vein that we would like to make three general remarks concerning the work of the Commission and the need to attain and maintain the confidence of States in the Commission.

First, we believe that the Commission should pay due regard to the views

Mr. Chairperson,

*Peremptory norms of general international law (jus cogens)*, which concerns a distinctive category of norms of international law that has a unique role in safeguarding the most fundamental rules of the international community of States.

Israel appreciates the efforts of the Special Rapporteur, Mr. Dire Tladi, as well as the extensive deliberations in the International Law Commission on this complex topic. However, Israel regrets that the Special Rapporteur and







Mr. Chairperson,

Israel would also like to reiterate its significant misgivings regarding the inclusion of a non-exhaustive list of norms that the International Law Commission had previously referred to as having a *jus cogens* status in the annex to the draft conclusions. This is for numerous reasons, which were , among which we would briefly mention the following:

First, Israel does not agree that all of the norms listed in the Annex are of *jus cogens* character, and is of the view that the list is likely to generate significant disagreement among States, once again risking the dilution of the concept of *jus cogens* norms and its legal authority.

Second, as noted above, even if such a list is described as non-exhaustive and merely reflecting prior work of the International Law Commission, it would most likely be perceived by others as practically complete, or as a claim by the Commission that the norms included in the list are more significant than norms that were not included in it. Indeed, it is unclear how the choice to include or exclude certain norms from the annex was made, which can only add to its contentious nature.

Third, Israel would like to note in this regard that the inclusion of any list of substantive norms of *jus cogens* in a project dedicated solely to the methodology of identifying such norms, seems uncalled for. The commentary to the draft conclusion 23 states that in putting together this

illustrate, by reference to previous work of the Commission, the types of





Mr. Chairperson

Turning to the topic of "**Protection of the environment in relation to armed conflict**", the State of Israel acknowledges the third report of the Special Rapporteur, Ms. Marja Lehto. We appreciate the observations made by the Special Rapporteur on States' comments, including those submitted by Israel, in which our position on the various Draft Principles and commentaries was placed on record in detail.

As a general observation, the State of Israel wishes to reiterate its position that the inaccuracies concerning the state of the law in the draft principles that employ mandatory language appear, in places, to owe to the  
and easier to

. There are a few methodological choices that raise particular concern.

The draft principles borrow from formulations found in recognized legal obligations, or merge together different rules from different legal contexts and conflate the rules of international humanitarian law, international human rights law and international environmental law, in a way that alters or misrepresents the substance or scope of application of those rules. Additionally, while Israel recognizes the significance of the different legal regimes, we reiterate that the boundaries between these regimes must not be blurred, as is at times evident throughout the draft principles. Rather, these legal fields should be understood as distinguishable from one another, each designed for a specific purpose.

Throughout the report, the Special Rapporteur makes use of terms that are not a part of the general discourse of the law of armed conflict. This is exemplified *inter alia* in Draft Principle 19, wherein the phrase "health or survival" is replaced with "health and well-being". An additional example is apparent in Draft Principle 14, which alters the existing balance struck in international humanitarian law, by granting elevated status to humanitarian considerations over military necessity.

Moreover, the draft principles set aside the accepted legal distinction between international and non-international armed conflicts, and on several occasions make assertions without sufficient substantiation.

Lastly, the Commission amalgamates legal obligations together with

As an overarching matter, the State of Israel recalls that the protection of the natural environment is anthropocentric in nature, in the sense that under customary international law, an element of the natural environment constitutes a civilian object only when it is used or relied upon by civilians for their health or survival. This approach finds ample support in the actual practice of States and many other legal sources. Israel welcomes the statement in the third report of the Special Rapporteur that addresses this issue and explicitly acknowledges that the anthropocentric approach is inherent in the law of armed conflict . At the same time, Israel regrets the fact that text of the principles had remained vague in this regard and has not been clarified accordingly, and that no explicit elaboration was added about the in the commentary. In this context, we note that the Special Rapporteur presents the view whereby the natural environment is a civilian object, as one which enjoys general support. However, this claim is based solely on the ICRC's *Guidelines on the Protection of the Natural Environment in Armed Conflict*, making no reference to state practice.

Mr. Chairperson,

Israel would like to reiterate its principled position that the Commission is indeed mandated to engage in progressive development of the law, but such development must be based upon sufficient and convincing state practice.

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