

**Statement on behalf of  
Denmark, Finland, Iceland, Sweden and Norway  
77<sup>th</sup> Session  
of the General Assembly of the United Nations**

**6<sup>th</sup> Committee**

**Agenda item 77:**

**Report of the International Law Commission on the work of its seventy-third session  
(Cluster I)**

**Delivered by: First Secretary Ms Mirjam Bierling**

**New York**

**25 October 2022**

Mme./Mr. Chair,

I have the honour to deliver this statement on behalf of the Nordic countries; Denmark, Finland, Iceland, Sweden - and my own country – Norway.

The Nordic countries welcome the International Law Commission's Report on the work of its seventy-third session. We wish to thank the outgoing Commission for excellent contribution during its term that was not without challenges due to the covid-19 pandemic. We want to reiterate our deep appreciation of the Commission's contribution to the progressive development and codification of international law.

During the current term, the Commission has finalized altogether seven topics, which is a clear testimony to the fact that the Commission delivers in accordance with its mandate. These achievements are all the more commendable considering that the Commission had to carry its work partially in hybrid format due to restrictions related to the covid-19 pandemic. We are confident that when discussing its working methods, the new Commission will be in a position to benefit from the experiences gathered during the work under the covid-19 restrictions.

Before commenting on the topics covered in Cluster I of the Report, we would like to use this opportunity to make some general remarks regarding chapters I, II, III and X of the Report.

During this final year of its term, the Commission adopted on second reading both the draft conclusions with commentaries on the identification and legal consequences of peremptory norms of general international law (*jus cogens*); and the draft principles with commentaries on the protection of the environment in relation to armed conflicts. We congratulate the Commission for these achievements and thank the Special Rapporteurs Mr. Dire D. Tladi and Ms. Marja Lehto for their dedication to the work on these important topics.

Substantial progress was made on other topics on the Commission's agenda as well. We would particularly like to highlight the adoption on first reading of 18 draft articles and a draft annex on immunity of State officials from foreign criminal jurisdiction, together with commentaries thereto.

The Nordic countries take due note of all the requests for information contained in Chapter III of the Report. Examples of State practice are particularly pertinent for many of the topics currently under consideration, and the Nordic countries will make every effort to provide the Commission with relevant information, where available, and encourage other States to do the same.

We note the proposed Terms of Reference for the Trust Fund for Assistance to Special Rapporteurs. We are aware of the Commission's concerns relating to the effect of the budgetary constraints placed on the Commission. The Nordic countries agree that it is essential that all members of the Commission are able to attend the meetings of the Commission, and that all Special Rapporteurs have the research assistance necessary for the preparation of the reports.

The attendance during the sessions of the Secretariat teams needed for the Commission to fulfil its mandate is equally important. While we stress that adequate resources for the Commission to fulfil its mandate should be provided from the regular budget of the UN, we remain open to consider the establishment of a Trust Fund to facilitate additional support for the work of the Commission and its members.

We welcome the inclusion of the topics 'Settlement of international disputes to which international organizations are parties'; 'Prevention and repression of piracy and armed robbery at sea' and 'Subsidiary means for the determination of rules of international law', which would be an important addition to the Commission's work on the sources of international law so far.

We also see merit in the topic 'Non-legally binding international agreements' that was included in the long-term programme of work of the Commission. We thank Mr. Mathias Forteau for the thorough research syllabus, and we find the proposed scope of the topic *prima facie* realistic. We are of the view that the planned delimitations of the topic are appropriate and serve to focus the work on key legal issues.

Mme./Mr. Chair,

Turning now to chapter IV of the report **on peremptory norms of general international law (jus cogens)**, the Nordic countries would like to commend the Special Rapporteur, Mr. Dire Tladi, for his monumental achievement. It is especially thanks to his devoted work that the International Law Commission now has adopted the draft conclusions, its annex and commentaries on the identification and legal consequences of peremptory norms of general international law, and has submitted them to the General Assembly.

We commend the contribution of the International Law Commission in providing this guidance to practitioners who may be called upon to determine the existence of peremptory norms of general international law and their legal effects, and applaud the Commission for submitting its work on the draft conclusions regarding this very important topic to the General Assembly.

We must note that the Commission had to finalize its work on this topic while the Russian invasion of Ukraine was ongoing. The General Assembly had in resolution ES-11/1 of 2 March 2022 deplored in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the UN Charter. This serious breach of a peremptory norm only emphasizes the significance of this body of law that has now been systematized by the Commission in these draft conclusions and commentaries.

As stated many times over the years, the Nordic countries maintain the view that the topic of peremptory norms of general international law (*jus cogens*) is best dealt with through a conceptual and analytical approach, rather than with a view to elaborating a new normative framework for States. Considering the relatively limited and varying State practice on the topic, codification might not be the most prudent way forward. We would also like to reiterate that

interpretations on the consequences and effects of jus cogens norms must be based on the position of States; not that of other actors.

Mme./Mr. Chair,

The 6th Committee now has before it the draft conclusions adopted by the Commission on second reading. While many of the Nordic countries' comments and observations of June 2021 on the draft conclusions have not resulted in changes, we are pleased to observe that draft conclusion 3 on the nature of peremptory norms of general international law has been moved in order to avoid the perception that it forms part of the criteria for the identification of a peremptory norm of general international law.

We find it necessary to reiterate our position regarding the need for a clear definition of the scope of relevant actors in identifying peremptory norms of general international law. We feel that the need for clarity is particularly pressing with regard to the definition of the term "other actors" in draft conclusion 7, paragraph 3. However, in the commentary [paragraph 3] it is rightly stated – and it should be stressed – that it is the position of States that is relevant; and not that of other actors. The same applies to draft conclusion 9, paragraph 2, and the reference to the works of expert bodies, etc., as subsidiary means for the determination of the peremptory character of norms of general international law. The Nordic countries continue to hold the view that the question of the role of these organs should be approached with caution.

The Nordic countries also sustain our reservations on the non-exhaustive list of jus cogens norms mentioned in draft conclusion 23 and annexed to the draft conclusions. Although we note that the list is without prejudice to the existence or subsequent emergence of other peremptory norms, we find it important to emphasize that this list shall not be interpreted as preventing the emergence of State practice and *opinio juris* in support of other norms.

We are, on the other hand, favourably disposed towards many of the adaptations in the draft conclusions. For instance, we support adding "and representative" in draft conclusion 7, paragraph 2. The reformulation of draft conclusion 14, paragraph 1, also seems sound.

The Nordic countries would like to highlight the significance of draft article 19, which lays out the particular consequences of serious breaches of peremptory norms. We agree with the Commission in that the obligation of States to cooperate by lawful means to bring to an end such breaches is a part of general international law. We also agree that paragraph 1 of draft conclusion 19 emphasizes collective measures. We find the negative obligations contained in paragraph 2 equally important and well settled in general international law.

The Nordic countries are pleased to read the addition in the commentary [paragraph 5] to draft conclusion 16 stating that this conclusion should not be read as providing cover for unilateral repudiation of obligations flowing from binding resolutions of the United Nations. We are nevertheless concerned about the possible ramifications of this draft conclusion on the systemic setup, including the institutional balance between the Security Council and the

International Court of Justice, found in the Charter of the United Nations. In this regard, we find the changes made to draft conclusion 21 stressing the recommendatory character of the dispute resolution procedure to be very important.

Mme./Mr. Chair,

Moving now to the topic **Protection of the environment in relation to armed conflicts**. The Nordic countries would like to congratulate the International Law Commission for completing its work on this important and timely topic. We would also like to take this opportunity to thank the Special Rapporteur, Ambassador Marja Lehto, for her outstanding work. We also reiterate our deep appreciation for the excellent contribution of the previous Special Rapporteur, Ambassador Marie Jacobsson, to the work on this topic.

Armed conflicts inflict a multitude of harms to the environment, both direct and indirect, immediate and long-term. The International Law Commission decided to include the topic Protection of the environment in relation to armed conflicts in its work programme in 2013, in clear recognition of a need to systematize and strengthen the different bodies of law that are relevant in the intersection of armed conflicts and protection of the environment.

During the decade that the Commission has worked on this topic, climate change and biodiversity loss have increasingly been recognized as existential threats, in accordance with the scientific consensus. Such global environmental challenges provide the larger context for this topic. Ongoing armed conflicts, such as the Russian war of aggression in Ukraine, have brought to limelight the devastation inflicted on the environment through strikes on chemical plants, refineries and pipelines, not to speak of the horror of military actions taking place in the vicinity of nuclear power plants. Thus, we believe that the draft principles are as timely as they are important.

The Nordic countries welcome the set of draft principles, and the commentaries thereto, adopted by the Commission on second reading at its last session. We believe that because of the high quality of the principles, their all-encompassing nature, and the fact that they have been developed in close consultations with States and relevant international and expert organizations, the principles will become an instrument of legal reference in the protection of the environment in relation to armed conflicts.

Mme./Mr. Chair,

The aim of the draft principles is clearly outlined in the Preamble, which provides a conceptual framework for the draft principles and sets out the context in which they were developed as well as their main purposes. The Preamble underlines the urgency of the protection of the environment for present and future generations. It recognizes that the environmental consequences of armed conflicts may be severe and reach far beyond those that are immediately affected, potentially exacerbating global environmental challenges, such as climate change and biodiversity loss. Moreover, the Preamble recognizes the relationship

between the environment on the one hand and livelihoods, food and water security, maintenance of traditions and cultures, and the enjoyment of human rights, on the other.

The Nordic countries are pleased with the broad approach that the Commission has taken to this topic. The temporal scope of the draft principles covers the whole conflict cycle, before, during and after armed conflicts. This methodology is well suited for the systematization of rules and principles pertaining to the protection of environment in relation to armed conflicts. The broad temporal scope means that the principles are not limited to the obligations of the warring parties during an armed conflict, but also seek to clarify what other, non-belligerent States, as well as 'other relevant actors' could and should do to enhance environmental protection in relation to armed conflicts.

We also agree with the material scope of the draft principles in that they cover both international and non-international armed conflicts. Importantly, different draft principles are addressed to States, international organizations and 'other relevant actors'. As recognized in the Preamble, effective protection of the environment in relation to armed conflicts requires that measures to prevent, mitigate and remediate harm to the environment are taken not only by States, but also by international organizations and 'other relevant actors', including non-state armed groups, business enterprises and civil society organizations.

The draft principles draw on other areas of international law in addition to IHL, particularly international human rights law and international environmental law. These areas of law are obviously relevant in pre- and post-conflict phases and retain relevance during armed conflict. Moreover, in addition to clarifying and systematizing existing international law relating to armed conflict, the principles contain many commendable recommendations for the purpose of the progressive development of international law.

Mme./Mr. Chair,

We would like to shed light on the particular importance of the following draft principles.

Recalling our prior statements on this topic, the Nordic countries are pleased that the protection of the environment of indigenous peoples is addressed in its own draft principle (5). We emphasize in particular the participatory rights of indigenous peoples relating to their lands, territories, and resources. This means that consultations shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent, before adopting measures that may affect indigenous peoples directly. The right to be consulted is well reflected in paragraph 2 of draft principle 5 as regards the post conflict stage, and it is also generally applicable at other stages. In this regard, we recall that the rights of indigenous peoples have a larger temporal application than the post-conflict stage.

We welcome the focus on peace operations in draft principle 7, which aims to ensure that those involved in such operations undertake their activities, from the planning phase through its operational part, to the post-operation phase, in such a manner, as appropriate, that the impact

of their activities on the environment is minimized. We agree with the scope of the principle, which covers broadly all peace operations that are established in relation to armed conflict.

Draft principle 8 (Human displacement) recognizes the interconnectedness of providing relief for persons internationally and internally displaced by armed conflict on the one hand, and reducing the impact of displacement on the environment, on the other. The principle is addressed at States, international organizations and other 'relevant actors'. In this regard, we welcome the inclusion of non-state armed groups in Paragraph 7 of the commentary, which lists, in a non-exhaustive manner, who the 'relevant actors' could be.

Draft principle 10 (Due diligence by business enterprises) and 11 (Liability of business enterprises) belong to an area of law that is under rapid development. The Nordic countries welcome these provisions, which may serve as catalysts for legislative measures and good practices. We also appreciate the Commission's use of the term of 'business enterprises', in line with the United Nations Guiding Principles on Business and Human Rights.

We appreciate the confirmation by the Commission in draft principle 12 that the Martens Clause applies to the protection of the environment. Similarly, the Nordic countries welcome draft principle 16, which restates the prohibition of pillage and its applicability to natural resources.

Mme./Mr. Chair,

The Nordic countries find it important that the draft principles address the environmental obligations of an occupying power. We are pleased with the detail and depth of the analysis in the commentaries to draft principles 19-21, which we believe will be useful for those called upon to apply the principles.

We also welcome draft principle 22 (Peace processes) which aims to encourage parties to address matters relating to the restoration and protection of the environment as part of peace processes, including in peace agreements. In this regard, the Nordic countries emphasize the important role of local communities in peacebuilding and the right of women to equal, effective and meaningful participation in decision-making, including as regards restoration and protection of natural resources and the environment.

Mme./Mr. Chair,

The Nordic countries appreciate the Commission's inclusion of substantial principles on post-conflict measures. We particularly emphasize the need for cooperation and the sharing and granting of access to information to facilitate measures to remediate harm to the environment resulting from an armed conflict as outlined in draft principle 23. We agree that post-conflict environmental assessments may be crucial in facilitating measures to remediate harm to the environment resulting from an armed conflict. We are therefore pleased that the draft principle

encourages relevant actors, States and non-State actors, including international organisations, to cooperate to ensure such assessments and remedial measures are carried out.

Remnants of war at sea pose significant legal challenges owing to the multifaceted nature of the law of the sea. As outlined in the commentary to draft principle 27, a particular State could have sovereignty, jurisdiction, both sovereignty and jurisdiction, or neither sovereignty nor jurisdiction, depending on where the remnants are located. Accordingly, draft principle 27 addresses States generally, not only those which have been involved in an armed conflict, and expressly encourages international cooperation to ensure that remnants of war at sea do not constitute a danger to the environment. Recalling our prior statements on this topic, we agree with the Commission's approach, which leaves room for the development of law, while not undermining existing international legal obligations.

Mme./Mr. Chair,

The Commission's completion of this important topic is timely and indeed a major step forward in the systematization of the law relating to the protection of environment in relation to armed conflicts. In addition, the draft principles complement the important work by the International Committee of the Red Cross and Red Crescent (ICRC) in this area, including the updated ICRC Guidelines on the Protection of the Natural Environment in Armed Conflict. We also note the important work done by UNEP in its program on disasters and conflicts.

Thank you.