Statement by Pakistan
Report of the International Law Commission on the work of its seventy-third session (Agenda item 77)
(25 October 2022)

Mr. Chair,

At the outset, allow me to thank the Chair of the International Law Commission (ILC), Professor Dire Tladi, for his briefing, and congratulate him as well as other members of the Commission for the exceptional work done by the Commission.

2. My delegation also take note with appreciation the Report of the Commission of 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. Despite the adoption of the UN Charter, modern international law was still in the process of evolution, from a major powers-centric system to a more comprehensive framework encompassing the diverse legal cultures and traditions 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 have for its object the promotion of progressive development of international law and its codification.*"

5. The so-called "Golden Era" of the ILC witnessed the codification of several texts and the adoption of key instruments in the field of international law. This process continued past such era and the ILC produced outcomes in various fields, including the sources of international law, jurisdiction and immunities, the law of international organizations, international criminal law, the law of international relations, the 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 selection of topics, its

composition, working methods and interaction with Member States.

7. My delegations believes that as a subsidiary body of the UN General Assembly, the Commission should bear in mind the goal of serving the UN Member States when selecting topics, prioritizing legal questions that States urgently need answered in their practice. Its working methods should be based on well-established State practice and take into account the need to balance between codification and progressive development of law. When it comes to important but sensitive issues on which general consensus has yet to be achieved, bringing coherence and clarity to *lex lata* should take precedence.

8. The membership of the ILC also needs diversity based on equitable geographic representation. Special Rapporteurs are central to the work of the ILC. There have been 62 Special Rapporteurs in the seven decades of the ILC. Only 5 came from Asia, and only 7 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 is also fair to countries of the global South.

This has, unfortunately, not happened. There is a need to address these deficiencies in the work of the ILC to make it more representative and "*fit for purpose*".

Mr. Chair,

9. With regard to the first cluster of topics, I will restrict my intervention to the Commission's work on the "Peremptory norms of general international law" also known as *jus cogens*.

10. We commend the International Law Commission for its work on and the completion of the second reading of the draft conclusions and appreciate the outstanding contribution of the Special Rapporteur, Mr. Dire Tladi, to the preparation of the draft conclusions.

11. We concur with the methodology of the Commission, which focuses on the structural aspects of peremptory norms of general international law and is consistent with the approach to peremptory norms applied in the course of the elaboration of the Vienna Convention on the Law of Treaties and in the Commission's work on other relevant topics.

12. We agree with the key elements of the definition of a peremptory norm in draft conclusion 2, which closely follows the language of article 53 of the Vienna Convention. 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 rules of international law and universally applicable. Both draft conclusions are closely 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 preemptory norms of the international law under draft conclusion 23.

Mr. Chair,

14. Unfortunately, since 9/11, and in the absence of a sufficiently precise and legally grounded definition of terrorism, several states have in effect misused Security Council's counter terrorism resolutions to "criminalize" certain legitimate activities covered under international law, including the right of people to self-determination. Operative Para 1 of General Assembly resolution 2649

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

15. Despite the *ergo omnes* obligation pertaining to self-determination, the misuse of counter terrorism laws in the garb of giving effect to UNSC resolutions, is most rampant today in situations of foreign occupation, where such discretionary legal tools are routinely used to crush legitimate civil and political rights of peoples through draconian curbs on fundamental freedoms, including through imposition of digital and physical lockdowns and indefinite curfews, in the name of countering terrorism.

16. As the regulatory capacity of Security Council action in the field of counter-terrorism has expanded, the scope of its human rights obligations has enlarged in parallel as well. In this regard, the principles of respect and observance of human rights set out in Article 55 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 determined that there was a potential clash between a Security Council resolution and the applicant's fundamental rights, claimed by the Court to be *jus cogens.* These examples illustrate that conflicts between Security Council resolutions 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 ILC has rightly recognized that: "a *resolution, decision or other act of an international organization that would otherwise have binding effect does not create obligations under international law if and to the extent that they 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 under preemptory norms under international law.

I thank you.

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