

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

6th 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

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

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

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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 T

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.

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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.

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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-

encourages relevant actors, States and non-State actors, including international organisations, to coo