



NORWAY

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Report of the International Law Commission on
the work of its seventy-first session

Cluster II

Protection of the environment in relation to armed conflicts (Chap VI)
Immunity of State officials from foreign criminal jurisdiction (Chap VIII)
Sea-level rise in relation to international law (Chap X)

Statement by Norway on behalf of the Nordic countries

Mme./Mr. Chair,

I have the honour to speak on behalf of the five Nordic countries Denmark, Finland, Iceland, Sweden and my own country Norway, on the topics covered in Cluster II of the report of the ILC.

At the outset, we would once again like to thank the International Law Commission for its report and work conducted.

I shall start with the topic of Protection of the environment in relation to armed conflicts.

In August, the International Law Commission adopted 28 draft principles and commentaries thereto on first reading, including eight new draft principles on the topic. The Nordic countries would once again like to express our appreciation for the speed and quality with which the Commission has advanced the work. We also thank again the Special Rapporteur, Ambassador Marja Lehto, for her outstanding work and for her second report, presented this year. We also reiterate our deep appreciation for the excellent contribution of the previous Special Rapporteur, Ms. Marie Jacobsson, to the work on this topic.

(Check against delivery)

There is an increasing recognition of the intrinsic linkages between humanitarian and environmental concerns in conflict situations. Accordingly, the Nordic countries would like to emphasize that the draft principles address many timely questions, such as the designation of significant environmental and cultural areas as protected zones, the protection of the environment of indigenous peoples, the prevention and mitigation of environmental degradation in areas where persons displaced by armed conflict are located as well as the environmental obligations of an occupying power. The Nordic countries also welcome the inclusion of corporate due diligence and of corporate liability in the draft principles. Likewise, the Nordic countries appreciate the inclusion of substantial principles on post-conflict measures, in particular the need for cooperation and the sharing and granting of access to information.

Mme./Mr. Chair,

Now that the whole set of draft principles and commentaries is available for our scrutiny, we would like to make some general comments. Especially, we would like to applaud the broad approach that the Commission is taking to this topic. Importantly, the Commission has not limited its approach to situations of armed conflict, but has the whole conflict cycle covered, including the protection of the environment before, during and after armed conflicts. Thus, in addition to the law of armed conflict, other areas of applicable international law are also addressed. The Nordic countries welcome this contribution, which also contains many commendable recommendations for the purpose of the progressive development of international law.

We also agree with the material scope of the draft principles in that they apply in both international and non-international armed conflicts, which is logical as both types of conflict can have equally severe environmental consequences. We would like to thank the Special Rapporteur for the depth of the analysis regarding the related question of the responsibilities of non-state actors relating to the protection of the environment. We appreciate the confirmation by the ILC in principle 12 that the Martens Clause applies to the protection of the environment as well.

We note that the draft principles have different normative values under international law, reflecting a range from legally binding rules to recommendations. The language of each principle gives an indication of the normative value attached to it. The commentaries add clarity and explain where a principle is based on existing international law and where it is *lex ferenda*. We are pleased with the Commission's transparent and forward-looking approach in this respect.

Mme./Mr. Chair,

The Nordic countries welcome the adoption by the Commission of the entire set of the draft principles and commentaries on protection of the environment in relation to armed conflicts on first reading. We hope that this will lead to the completion of the work on the draft principles on second reading in 2021, as envisaged in the Commission's plan of work for the remainder of the quinquennium. These draft principles are a major step forward in the protection of environment in armed conflicts. In addition, they complement the important work of the United Nations Environment Programme (UNEP) and the International Committee of the Red Cross and Red Crescent (ICRC) in this area. It should also be recalled that the United Nations Environment Assembly (UNEA) has adopted several resolutions of relevance for the protection of the environment in areas affected by conflicts. Hence, the near-conclusion of this topic is coming at a time when the international community is becoming more and more aware of the need to protect the environment in armed conflicts.

We are looking forward to providing more detailed written comments on the draft principles and their commentaries and take this opportunity to encourage delegations to respond to the request of the International Law Commission for written comments on this topic by 1 December 2020.

Mme./Mr. Chair,

I will now turn to Chapter VIII of the report, concerning Immunity of State officials from foreign criminal jurisdiction.

The Nordic countries would like to thank the Special Rapporteur, Ms. Concepcion Escobar Hernandez, for her seventh report completing the examination of various procedural aspects, including the invocation and waiver of immunity, procedural safeguards, communication, exchange of information and cooperation between the involved states, as well as the procedural rights of the official.

The Nordic countries would like to reiterate our commitment to the Rome Statute of the International Criminal Court. We find it particularly important that the draft articles are harmonized with the Rome Statute. We recall that the irrelevance of official capacity in relation to individual responsibility for the gravest international crimes before international courts is today a part of customary international law.

The discussions in this session again touched upon draft article 7, which the Commission has provisionally adopted, and more specifically the link between procedural aspects and the exceptions to immunity in respect of serious crimes under international law set out in said draft article. As previously expressed on several occasions, the Nordic countries support draft article 7. We do see merit in the view that procedural guarantees and safeguards could address some of the concerns that have

been expressed regarding draft article 7. The Nordic countries support the proposed procedural safeguards, in order to ensure that all relevant aspects of cases involving claims of immunity are taken into consideration.

As regards the procedural aspects of immunity and the draft articles contained in the Special Rapporteurs seventh report, the Nordic countries fully agree with the view that these should provide certainty to both the forum State and the State of the official, and help to reduce political considerations and potential abuse of process for political purposes. The procedural safeguards, should, as the rapporteur has stated, be aimed at protecting the interests of both the forum State and the State of the official, and assist to build mutual trust between them. Important in this respect is the draft rules regarding exchange of information and the introduction of a flexible mechanism for consultations. We also very much welcome that the right of the State official to benefit from all fair treatment guarantees is thoroughly recognized.

Mme./Mr. Chair,

In its further work on the draft articles the Special Rapporteur and the Commission must also take into account the broad variations that exist in national legal systems, inter alia regarding the role of the judiciary and the executive and prosecutorial authorities, and endeavor to ensure that the draft articles are practicable under different circumstances.

The Nordic countries look forward to the continued work of the ILC on this topic and to receiving the eight report of the Special Rapporteur, that will consider *inter alia* the possible implication on procedural rules of the relationship between the immunity of State officials from foreign criminal jurisdiction and international criminal jurisdiction.

Mme./Mr. Chair,

As a last topic, I will now turn to Chapter X of the Commission's report, and the topic of Sea-level rise in relation to international law.

The Nordic countries are deeply concerned by the threat of sea-level rise as a consequence of climate change. Sea-level rise poses a profound threat to the international community. As expressed in paragraph 14 of the 2030 Agenda for Sustainable Development, climate change is one of the greatest challenges of our time and it is seriously affecting coastal areas and low-lying coastal countries, including many least developed countries and small island States. The survival of many societies, and of the biological support systems of the planet, is at risk. Climate change presents unprecedented challenges to the health of the ocean itself and the people who depend on it for their way of life.

While sea level has risen globally by around 15 cm during the 20th century, it is currently rising more than twice as fast – 3.6 mm per year. And it is accelerating – mainly due to increasing rates of ice loss from the Greenland and Antarctic ice sheets, according to the recent IPCC Special Report on the Ocean and Cryosphere in a Changing Climate.

Small Island States may fully or partially disappear due to sea level rise, or they may become unable to support human habitation. Low-lying areas that are not entirely submerged will be vulnerable to destructive erosion, periodic flooding and exposed to extreme weather conditions. Salinization will affect agricultural land and contaminate freshwater sources.

Small island developing states are home to 65 million people. These people are among the least responsible for climate change but are likely to suffer the most from its adverse effects.

Mme./Mr. Chair,

The factual consequences of sea-level rise prompt a number of important questions relevant to international law. The changing coastline affects the location of a number of maritime limits. National boundaries may be affected, and in certain instances particularly vulnerable States risk losing land territory that is the basis for their existence. Furthermore, a large number of persons may be forced to leave their homes to find assistance and protection abroad.

These issues pertaining to international law are well placed within the ILC and should be handled by the Commission. Given the pressing nature of the issue, the Nordic countries welcome the decision this year to move the topic of Sea-level rise in relation to international law to the Commission's active work programme and to establish an open-ended Study Group on the topic.

We support the approach over the next two years to focus on the following three subtopics; issues related to the law of the sea in 2020; Statehood; and Protection of Persons affected by Sea-level rise related issues in 2021. The Nordic countries will endeavour to provide relevant examples of practice and other information and material concerning sea-level rise in relation to international law.

The United Nations Convention on the Law of the Sea provides the international framework for all activities at sea. It amounts to a common set of rules, providing predictability and stability. It is therefore a core priority for the Nordic countries to safeguard and strengthen the Convention system. These considerations will guide our approach to ILC's work and to the issue in general.

The Nordic countries look forward to working with other States and actively engaging with the Commission to provide greater legal clarity in this important field.

Mme./Mr. Chair,

Historically, the ocean has not featured prominently on the international climate change agenda. The 2015 Paris Agreement mentions the ocean only once, in the Preamble. The latest IPCC Special Report fills the knowledge gaps and highlights the urgency of prioritizing timely, ambitious and coordinated action to address the unprecedented and enduring changes in the ocean and cryosphere. Global warming has already reached 1°C above the pre-industrial level, due to past and current greenhouse gas emissions. We need to act decisively and we need to act fast.

Responding to sea-level rise will require practical as well as legal solutions. Our discussions about the **legal** consequences of sea-level rise must therefore be seen in tandem with and not overshadow our **political** determination to address climate change.

The risks associated with climate-related disasters are already a reality for millions of people around the globe, and they are not going away. It is no longer possible to ignore the fact that climate change has consequences for security. For small island states, this is a matter of life and death. In some conflicts in Africa, drought is increasing tensions. Addressing climate-related security issues will become increasingly important in the time ahead, and is a priority for Norway, as a candidate of the Nordic countries for a non-permanent seat in the Security Council.

I thank you, Mme./Mr. Chair.