



Republic of Cyprus

71st Session of the United Nations General Assembly

Report of the International Law Commission on the work of its sixty-eighth session  
(Agenda item 78)

Cluster I: Chapter V (Identification of Customary International Law)

Cluster II: Chapter IX (*Jus Cogens*)

Concerning Chapter V on the **Identification of Customary International Law**, allow me to commend the Special Rapporteur, Sir Michael Wood for his continued efforts to advance the ILC's work on this topic. We take note of the completion of the first reading of the 16 draft conclusions together with draft commentaries.

On the notion of the persistent objector we would like to recall our previous comments, and would like to reiterate our concerns regarding the proposed draft conclusion 15, which have to do *inter alia* with the fact that available international jurisprudence has largely dealt with the matter in *obiter dicta* and in cases where the rule in question had, at the time considered, not acquired the status of customary international law. We, therefore, hold that it would be premature to develop a conclusion on this issue. Although the concept does exist in international theory, the "differing views" on the topic, to which para. 4 of the commentary refers to, is an issue that merits elaboration, given its implications on the very authority of the principle.

Further, the issue of the inapplicability of the concept not just to *jus cogens* but also to other kind of rules of fundamental importance, is another aspect that needs to be further reflected upon in the framework of this work, given also the significant amount of support to this end.

In addition, the work so far has not dealt with the temporal aspect of whether an objection can be maintained in the long run, and especially after a rule has developed from an emerging rule to being part of the corpus of customary international law. In terms of state practice, we have seen numerous examples where states abandon their initial objections in order to accept rules that are moving towards crystallization.

At any rate, a state invoking the persistent objector concept shall be under a duty to present solid evidence of its long-standing and constant opposition to the rule under concern in any given case prior to its crystallization. This is well reflected in the work so far.

We request that the Special Rapporteur and the Commission, address these matters, including the points raised in the previous debate, in its further work.

I now turn to Chapter IV on *Jus Cogens* and would like to commend the Special Rapporteur, Dire Tladi for his first report on the topic.

Cyprus attaches great importance to furthering work on this topic. My delegation has been an early and active proponent of the notion of peremptory norms / *jus cogens* in international law in repeated statements in the Sixth Committee and in the Vienna Conference on the Law of Treaties, as reflected also in footnotes in the Report of Special Rapporteur. Let me recall that the Cypriot member of the International Law Commission at the time, Ambassador Andreas Jacovides, made a proposal in 1993 for the inclusion of *Jus Cogens* in the ILC's Programme of Work and supported it by full documentation (ILC Document A/CN.4/454, dated 9 November 1993).

With respect to the law of treaties, as the Report correctly points out (para. 39 and footnote 127),"there were instances, even before the adoption of the Commission's draft articles or the Vienna Convention, when States invoked the potency of *jus cogens*. In 1964, for example, Cyprus contested on the basis of the notion of peremptory norms, the validity of the treaty of Guarantee between Cyprus, the United Kingdom, Greece and Turkey of 1960", if Article 4 of the Treaty was to be interpreted as granting the right of forcible military intervention in violation of Article 2(4) of the UN Charter. This position was also in line with the opinion submitted by the OLA upon request by Greece in May 1959.

Given that Articles 53 and 64 of the Vienna Convention on the Law of Treaties 1969 deal with the invalidating effect of *jus cogens*, the current work could perhaps deal further the question of who determines whether there is a conflict with *jus cogens*.

As a general remark, we fully agree with the precept that the Commission should avoid any outcome that could result in, or be interpreted as, a deviation from the 1969 Vienna Convention. Having said that, Cyprus also recognizes that the scope of the topic extends beyond the law of treaties, and includes other areas of international law, such as the Responsibility of States for Internationally Wrongful Acts.

We moreover agree with the proposed programme of work: for consideration of the criteria for *Jus Cogens* in 2017, their consequences in 2018 and any remaining miscellaneous issues in 2019. On the issue on whether the Commission will opt for the drafting of an illustrative list of norms that have already acquired the status of *jus cogens*, a prospect which has our full support, it would also be sensible to apply the notion of hierarchical superiority to *jus cogens* norms themselves by putting the prohibition of force in international relations at the top of the list. This is supported by the text proposed by the ILC during the negotiations of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations. In particular, the commentary called the prohibition of the illegal use of armed force embodied in the UN Charter 'the most reliable known example of a peremptory norm' (A/Conf 129/16/ Add 1 (vol II), p. 39).

From a practical perspective, contrary to the Commission's work on the topic of "Customary international Law" where the elaboration of a list of customary rules would not have been feasible, the comparably limited number of *jus cogens* norms, makes it possible to envisage such an illustrative list. Substantively, considering that the existence of peremptory norms depends on acceptance and recognition by the international community of states, as highlighted in Article 53 of the Vienna Convention, then the illustrative list would provide necessary clarity.

I thank you for your attention.