Islamic Republic of
I R A N
Permanent Mission to the United Nations

Statement by

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before
The Sixth Committee of the Seventy- Second Session of the United Nations General Assembly
on
Report of the International Law Commission on the Work of its sixty – ninth session
(agenda item 81)
Cluster III
(Chapters VIII, IX and X)
Peremptory norms of general international law (*Jus cogens*)
Succession of States in respect of State responsibility
New York, 01 November 2017

In the name of God, the Most Compassionate, the Most Merciful

Mr. Chairman,

On the topic of "**Peremptory norms of general international law (*Jus cogens*)**" my delegation would like to thank the Special Rapporteur Mr. Dire Tladi for preparation of the second report and we would like to make some comments on the topic.

While cumulative criteria for identification of *jus cogens* have been driven from article 53 of the 1969 Vienna Convention, the report is silent on the question of *who* determines whether the criteria have been met. In this regard, the Special Rapporteur asserted that his report "will take the 1969 Convention as a point of departure in developing the criteria". To fill this lacuna, one may benefit from article 66(a) of the Convention, in which the International Court of Justice has been recognized as the main competent body for resolving the disputes on the application or interpretation of jus cogens. While we share, to some extent, this finding, paragraph 125 of the Judgment of ICJ in February 2006 is noteworthy, where the Court considers that the rules contained in Article 66 of the Vienna Convention do not have the nature of customary

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international law. Furthermore, a number of countries have made reservation to this article of Vienna Convention when they became party to it.

The criteria for identification of jus cogens "refer to the elements that should be present before a rule can be qualified as a norm of jus cogens". Hence, the "non-derogability" could not be considered as a criterion, as it is a consequence of the emergence of a jus cogens norm. As has been reaffirmed by a relevant international legal body, the enumeration of non -derogable provisions are related to but not identical with the question whether certain human rights obligations bear the nature of peremptory norm of general international law. Furthermore, the category of peremptory norm even extends beyond the non-derogable provisions of the International Covenant on Civil and Political Rights.

With regard to the title of the topic, we agree with the new title as it is derived from the 1969 Vienna Convention as the main point of reference, in the same approach, we agree with addition of the element "modification" in paragraph 4 (b).

My delegation continues to believe that developing a list of *jus cogens* norms needs further consideration. In case, if such list is going to be eventually developed, the one set out in article 52 of 1969 Vienna Convention namely prohibition of the threat or use of force should be at the top, as this article clearly reaffirms that a treaty is void if its conclusion has been procured by threat or use of force, in violation of the principles of international law embodied in the Charter of the United Nations. This article should be read in conjunction with article 53 in terms of *ab initio* nullity of a treaty concluded in contradiction with a *jus cogens*.

With regard to the relationship between *jus cogens* and the obligations under the United Nations Charter, my delegation is of the conviction that article 103 of the Charter of the United Nations only *affirms* that in the event of a conflict between the obligations under the present Charter itself and the obligations under any other international agreement, their obligations under the present Charter would prevail. Therefore, in the event of conflict between norms of *jus cogens* and Charter obligations, *jus cogens* norms remain superior.

On the notion of regional *jus cogens*, to be considered in a future report, reference has been made to some courts and their specification of certain rules as regional *jus cogen,* in order to preserve the public order in a given geographical region. Nevertheless, according to article 53 of 1969 Vienna Convention the main reasoning for recognizing a peremptory norm of general international law is a norm that has been accepted and recognized by the international community of States as a whole. It is evident that the notion of regional jus cogens can hardly be inferred from this criterion.

With respect to Conclusion 7 (2) on the requirement of "acceptance and recognition by a large majority of States", we agree with the phrase "a very large majority" of States, representing the main forms of civilization and principal legal systems of the world.

Regarding the combination of draft conclusions 6 and 8, we agree with streamlining the two draft conclusions since the draft conclusion 8 is a reformulation of draft conclusion 6.

Considering the changes made in the wording of draft Conclusion 4 on the replacement of word "show" with "establish", while we concur with the suggested term in the English version of the draft Conclusions, we believe that the term "démontrer" in the French text is not a proper equivalent with the term "establish" as they hardly denote the same threshold; therefore, we propose the term "établir" to resolve the discrepancy between the two versions.

That being said, we look forward to the future work of the Special Rapporteur and the Commission on this topic.

Mr. Chairman,

As regards the topic "**Succession of States in respect of State responsibility**", I would like to thank the Special Rapporteur, Mr. Pavel Sturma, for his efforts in preparation of the preliminary report. I will make some comments on the topic and the report.

First on a more general level, we concur with several members of the Commission that the Special Rapporteur should provide the Commission a more systematic account of the relevant materials, especially with respect to State practice and case law. Due to the rarity of State practice and limited number of cases on the topic, the conclusion that the rule of non- succession in respect of State responsibility has changed, seems far from convincing. If the Special Rapporteur believes otherwise, we expect him to provide rich sources of materials and reasoning in this regard.

Moreover, we concur with the Special Repporteurr's stipulation that "in principle an agreement between States concerned should have priority over subsidiary general rules on succession". In addition, we believe that, for the purpose of the present topic, only those agreements could be addressed that are concluded between States under the applicable rules of international law on treaties and after the date of succession. Also, we are of the view that rules governing succession of States should not affect rights and obligations of liberation movements under foreign occupation, whose situation after independence is comparable to those countries formed on the basis of the theory of *tabula rasa (blank slate).* Furthermore, in case of illegal protracted foreign occupation, any responsibility arising from wrongful act of occupying power will be continuously on the shoulder of the occupier and not on the successor State, even after

termination of the occupation. This is inferred from a recognized principle of international law, namely, "ex injuria jus non oritur".

With regard to article 2 (e) on the definition of responsibility of States, we support the deletion of subparagraph (e) as it is not being used either by 2001 draft articles on responsibility of States , nor by 2011 draft articles on the responsibility of international organizations.

Concerning proposed draft article 4 (2) on unilateral declarations, while it does not include all of the legal requirements of unilateral declarations, we recommend the Special Rapporteur to refer to guiding principles adopted by the Commission in 2006.

Lastly, on the final form of the Commission's work on the topic, we are not convinced that "draft articles" is a good choice for the time being. Having in mind the previous works of the Commission on the related topic including the 1978 Vienna Convention and 1983 Vienna Convention, it seems that the ILC's work on the topic have not yet received widespread endorsement by States, since the States concerned have preferred to settle their disputes regarding succession through bilateral agreements. Thus, we are more inclined with the suggestion of some members of the Commission that draft guidelines would be more appropriate.

Regarding those materials prepared by non-governmental organizations such as Institute of International Law or International Law Association with regard to succession of States in respect of State responsibility, it seems that the Commission has two options ahead; first, it could stick to the rules reflecting *lex lata*, bearing upon the work already undertaken by the said institutions. In such case, the question arises as to the richness and novelty of the final product. Second, the Commission could opt for taking the work done by the said institutions as a point of departure. This makes us realize the difficulty of the task undertaking by the Special Rapporteur; another reason for developing "draft guidelines" instead of "draft articles".

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