

# ISRAEL

SIXTH COMMITTEE

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Statement by  
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Ministry of Foreign Affairs

ISRAEL

Report of the International Law Commission on the work  
of its sixty-ninth session

CLUSTER III

Peremptory Norms of General International Law (Jus Cogens)

Succession of States in Respect to State Responsibility

Agenda Item 81

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Mr. Chairman,

The State of Israel acknowledges the importance of *peremptory norms of general international law (jus cogens)* as a widely-accepted doctrine of international law, and welcomes the second report of the Special Rapporteur, Mr. Dire Tdali, on this topic. The work of the Special Rapporteur and the discussions in the International Law Commission on this topic underline the complexity of defining and codifying this concept. While the notion of *jus cogens* has existed for centuries, the process of attaining this status is still unclear.

In light of this uncertainty, it is important in our view that the International Law Commission continue to refine this exercise, without immediately expanding its scope, by further developing the existing Draft Conclusions and creating a corresponding Commentary.

In this context, we would like to reiterate our position regarding the compilation of a list, either illustrative or comprehensive, of *jus cogens* norms. It is our view that the drafting of such a list would be premature before completing the work regarding criteria and implications of *jus cogens*, and likely to produce more confusion and debate as opposed to clarity and consensus.

In addition, regarding the process as a whole, we believe that work on this project must take account of, and be consistent with, the work and progress in the Commission's project on the identification of customary international law. Due to the fundamental inter-relationship between customary norms and *jus cogens*, we recommend holding a continuous dialogue between the two bodies of work in order to ensure consistency and harmony, both in conceptual approach and in the categories and terminology used, in the process of addressing each of these topics.

Mr. Chairman,

While the Draft Conclusions that were presented by the Special Rapporteur serve as a solid basis for a continued discussion, there are considerable discrepancies between the principles and terminology used in the Draft Conclusions when compared with those used to address similar areas in the context of the work on the identification of customary international law.

In this context, we would also like to present some additional preliminary comments regarding the Draft Conclusions.

First, we believe that clarification is required regarding the distinction between criteria for *jus cogens* as stipulated in Draft Conclusion 4, and its descriptive elements as specified in Draft Conclusion 3. In this context, we are concerned that the current formulation of these Draft Conclusions leaves room for debate regarding the significance of Draft Conclusion 3. In our view, it is questionable whether it is appropriate to include descriptive elements that are not of a normative nature, and whose legal ramifications are unclear, in conclusions that are of a legal nature.

Second, Israel supports the clear distinction in Draft Conclusion 5 (and the elaboration in the second report of the Special Rapporteur) between sources of law that can serve as a basis for *jus cogens* norms, like customary international law, and sources that can only reflect such norms, like treaty law.

Third, Regarding the level of acceptance and recognition required for the identification of a norm as *jus cogens*, as addressed in Draft Conclusion 7, we support the opinion expressed in the Commission that the present wording is unbalanced and does not reflect current methodology for the identification of *jus cogens* norms, and likewise suggest requiring acceptance by "virtually all states" rather than "a large majority".

Last, our earlier comment regarding the need for consistency with respect to the Commission's project on the identification of customary international law is of particular importance when discussing evidence of acceptance and recognition (Draft Conclusion 9). We are of the view that the standard of evidence required to substantiate *jus cogens* is significantly higher than the standard necessary to substantiate customary law, which itself is rigorous. In this vein, when using treaties as evidence of the existence of peremptory norms, we believe that only treaties with virtually universal adherence can provide evidence of acceptance. In this context, Israel believes it is inappropriate to look to political resolutions of international organizations or judgements of national courts, as evidence and would recommend deleting this element from the Draft Conclusions.

Mr. Chairman,

While we note the inclusion of the topic of *Succession of States in Respect of State Responsibility* in the ILC's program of work and congratulate Mr. Pavel Šturma on his appointment, we would like to question, as some members of the Commission have, whether there is a need for this study given the reality of contemporary states.

We recognize that this project is in its infancy, and like some members, we believe it is too early to determine its final form, but in any event, we agree that any final product would be subsidiary in character to agreements between states in the context of a specific succession.

As for the Draft Articles, we share the concern of some of the members of the commission, who suggested that Draft Articles 3(4) and 4(3) may be redundant since they simply restate that existing agreements are subject to the accepted principles of international law. In this vein, we agree with commission members who supported referring only Draft Articles 1 and 2 to the drafting committee at this juncture, while holding Draft Articles 3 and 4 for future discussion.

Thank you, Mr. Chairman