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**International Law Commission  
Report on ILC's 69<sup>th</sup> Session**

***Chapter VIII – Peremptory norms of general international law (ius cogens)***  
***Chapter IX – Succession of States in respect of State responsibility***  
***Chapter X – Protection of the environment in relation to armed conflict***

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## ***Chapter VIII – Peremptory Norms of General International Law (Jus Cogens)***

The Romanian delegation took note with great interest of the content of the substantial debates which have occurred during the consideration by the Commission of the topic of *Peremptory Norms of General International Law (Jus Cogens)* and commends heartily the work of the Special Rapporteur, Mr. Dire D. Tladi, whose in-depth knowledge of the subject is reflected in the text of the very detailed second report.

Romania is largely supportive of the substance of the Draft conclusions 4 to 9 put forward by the Special Rapporteur, which we consider to be a fine-balanced and accurate account of the existing international law in the field.

We would like to make some specific comments in respect of the Draft conclusions.

In relation to Draft conclusion 4, Romania agrees with the "two criteria approach" followed and concurs that modification by a subsequent norm of *jus cogens* (although present in the text of the article 53 of the Vienna Convention on the Law of Treaties) is not in itself an independent criterion for the identification of a *jus cogens* norm.

With regard to Draft conclusion 5, Romania remarks that the text sets out the definition of a criterion used for identifying a norm of *jus cogens* (in paragraph 1), and then proceeds to indicate the basis for the formation of *jus cogens* norms (namely customs, general principles of law and treaty rules), that is to designate the sources of such norms. Romania contends that, conceptually, criteria for *jus cogens* norms and sources of *jus cogens* norms are different matters, and it would be sound and more useful to have the sources treated separately, in an independent article; also, the title of the article should bear a specific reference to sources.

In the interest of streamlining the text, Romania considers that Draft Conclusion 6 might be dispensed with, since the thesis in the first paragraph follows from the definition set out in Draft Conclusion 4, while the content of the second paragraph is essentially covered by Draft Conclusion 7.

Turning to Draft Conclusion 7, we have some reservations in respect of the statement put forward in paragraph 3 to the effect that "acceptance and recognition by a large majority of States is sufficient for the identification of a norm as a norm of *jus cogens*". By their nature, *jus cogens* norms embody peremptory obligations binding upon every State and

reflect the fundamental norms shared by the community of States; such norms are accepted by the unanimity or quasi-unanimity of States. The same conclusion follows for the phrasing "norm recognized by the international community *as a whole*", used in the text of Draft Conclusion 7. Romania would suggest that a more stringent wording be used instead of "large majority", and would favour adding *at least* the term "very".

Draft conclusion 8 offers some useful distinctions and clarification which would help to differentiate between acceptance and recognition as a criterion for *jus cogens* norms and other concepts. Finally, Draft 9 is very helpful in exemplifying the types of materials which might be advanced as confirmation for acceptance and recognition of a rule of international law as a *jus cogens* norm. Romania would support retaining the text of Draft conclusion 8 and 9 as such.

Romania is looking forward to the further development of the topic by the International Law Commission.

### ***Chapter IX – Succession of States in respect of State responsibility***

We have studied carefully the initial report on the topic *succession of States in respect of State responsibility* and the overview of the discussions within the Commission as reflected in the ILC Report.

The debate within the Commission prompted one important conclusion in our view, namely that there is no one normative framework of relevance for the subject matter and that there is also limited state practice and even more so limited from the point of view of coherence.

We could agree with the position of the Special Rapporteur, namely the immutable character of non-succession thesis. However, there is a need to properly assess various situations pertinent to state succession in order to avoid jumping to the opposite assertion and make the succession thesis as *the* general rule. More likely, we would see the moving away from the non-succession thesis in particular, well-defined situations.

On the other hand, we are reluctant to engage in the development of new law on this matter. Several positions taken in the course of the debate, as reflected in the ILC Report, substantiate the position that a draft set of guidelines or, at most, a draft set of rules might

be developed by the ILC on this topic, namely: the work of the ILC on the succession of States in respect of State responsibility could be a useful *model* that could be used and also modified by the States concerned, otherwise the potential set of guidelines or rules could be used as a default position.

Therefore, the need for flexibility and the subsidiary nature of the rules on State succession in respect of State responsibility would require a less formal instrument than that of a convention.

*Having said all that, we maintain our reluctance for the ILC pursuing this topic as we consider it has a limited practical relevance.*

### ***Chapter X - Protection of the Environment in relation to Armed Conflicts***

Romania considers the issue of the protection of the environment in relation to armed conflicts is growing more and more in importance, due to the increased environmental awareness, progress of technology and the diverse forms of armed conflicts.

We commend the important work done until now by the Commission and we find good merits in the recommendations of the working group to extend the assessment to matters pertaining to the complementarity with other relevant branches of international law, such as international environmental law or protection of the environment in situations of occupation.

We also consider relevant the complementarity with law of the sea, and in relation with the threats of piracy and unconventional sea warfare, in order to make the analysis comprehensive.

Similarly, while acknowledging the difficulty of inventorying rules applicable to hybrid conflicts and non-state actors, we stress that they are of certain relevance to this subject, as well.

Regarding the question of special vulnerable categories, damage to the environment during armed conflict has direct consequences on all people who depend, for example, on agriculture, on that territory, even if they are not indigenous people. Thus, the

Commission might want to consider a more general statement aimed at the protection of people who have a very close connection to the environment in the territories they inhabit which should include poor local populations.

The Romanian delegation will follow with great interest the future work of the ILC on this topic in view of its completion.

This concludes this delegation's series of interventions on this year's ILC report.

Thank you, Mr. Chairman.