



SLOVAKIA

STATEMENT

by

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(check against delivery)

Mr. Chairman,

Allow me, at the outset, to thank the Chairperson of the International Law Commission Professor Georg Nolte for the presentation of the respective parts of the report to the Sixth Committee.

In my intervention, I will address Chapter VIII of the report, namely the topic of “*Peremptory norms of general international law (jus cogens)*”. First, my delegation would like to congratulate to Special Rapporteur Mr. Dire Tladi for his second report. We also welcome the change of the title of the topic, which now includes two notions: of “peremptory norms of general international law”, and of “jus cogens” in the brackets, giving the precedence to the former.

Slovakia has continuously expressed its interest in this topic due to the fact that peremptory norms of general international law enjoy both a great importance and sensitivity within the international community. It is for this reason why the criteria for their identification, reflected in the second report of the Special Rapporteur, should deserve, in our opinion, a particular attention.

My delegation undertook a due consideration of both the criteria and the process in which the peremptory norms of general international law are to be identified. Slovakia welcomes the approach of the Special Rapporteur of taking Article 53 of the Vienna Convention on the Law of Treaties as a point of departure in developing the criteria. Several points are, however, of concern.

First, my delegation wishes to underline that the requirement for acceptance and recognition plays a crucial role. In this sense, it is vitally essential to precise how the so-called *opinio iuris cogentis* is to be achieved in the community of States. We express our doubts on whether draft conclusions 6 to 9 fully respond to this ambition. Rather, in our view, they leave a room for non-desirable uncertainty as to how this *opinio* should be assessed.

Thus, we encourage the Special Rapporteur to elaborate more carefully, for instance, the question whether the acceptance and recognition is *necessarily and solely* linked

to the non-derogability, and if so, whether the States should express it explicitly, or, whether it is sufficient for States to relate their *opinio* to other references (such as the most fundamental values or the most significant and universal norm etc.). Moreover, as the draft conclusions employ the terms “acceptance” and “recognition” mostly (but not in every case) inseparably, we see a lack of clarity, on the one hand, whether the former refers to a mere passive attitude and the latter to some active statement or conduct, and on the other hand, whether or not they represent two different stages of *opinio* that are needed. Draft conclusion 9 dealing with the evidence of acceptance and recognition does not, regrettably, shed much light on these points. Stating that evidence of acceptance and recognition “can be reflected in a variety of materials”, and accordingly giving examples of treaties, resolutions, public statements etc., does not reveal whether the acceptance and recognition may also take a tacit, implicit or acquiescent form.

Second, the notion of “international community of States as a whole” reflects a personal element in the process of acceptance and recognition, and for this reason, it is equally important. In our view, draft conclusion 7, limiting the explanation to “a large majority of States”, leaves open the question, for instance, whether there is a particular uniformity among this large majority required which would correspond the formulation “as a whole”.

As the last point in my intervention, I would like to recall the support of Slovakia for the inclusion of the illustrative list of norms that qualify as peremptory. My delegation remains of the firm opinion, that a due consideration of all essential aspects of peremptory norms of general international law is hardly possible without the inclusion of the illustrative list of such norms.

Mr. Chairman, I conclude my statement by expressing the full encouragement to the Special Rapporteur and to the Commission and by wishing them a fruitful work.