



SLOVENIA

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STATEMENT

BY

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Report of the International Law Commission on the work of its sixty-ninth session, Cluster 3, Chapter VIII: Peremptory norms of general international law (*jus cogens*), Chapter IX: Succession of States in respect of State responsibility, Chapter X: Protection of the environment in relation to armed conflicts

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Mr Chairman,

It is my pleasure to address the Sixth Committee regarding the work of the International Law Commission on Cluster 3 topics.

Concerning 'Peremptory norms of general international law (*jus cogens*)', Slovenia welcomes the second report of the Special Rapporteur, which contains six draft articles concerning the criteria for the identification of *jus cogens* norms.

My delegation notes the approach of the Special Rapporteur, who based his analysis on Article 53 of the VCLT. However, we also note and appreciate the thorough analysis in his report identifying other possible ways to approach the definition. Recalling its previous statement on the topic, the Slovenian delegation believes that the nature of *jus cogens* norms is distinct and exceptional, as they reflect common and generally accepted fundamental values and foundations of the international order. As such, we agree that the approach taken on the criteria for *jus cogens* cannot be based entirely on consent. This is why Slovenia would welcome the consideration of the characteristics set out in draft conclusion 3, paragraph 2, in the context of the identification of *jus cogens*.

While acceptance and recognition by the international community of states as a whole is inherent in the notion of *jus cogens*, Slovenia concurs that it does not require acceptance and recognition by all states. At the same time, we see merit in further defining the notion of 'a large majority of States' in ascertaining the existence of consent in Draft Conclusion 7. Slovenia considers that the majority should be large enough to satisfy the need to avoid contentious views as to the character of a certain norm. In this context, Slovenia also joins those who call for a more detailed enunciation of the word 'attitude' in relation to the identification of *jus cogens*.

Regarding Draft Conclusion 8, Slovenia invites the Special Rapporteur to also examine the role of acquiescence in relation to the acceptance and recognition of *jus cogens*.

My delegation also supports an additional examination of Draft Conclusion 9 in order to ensure greater certainty. For example, Draft Conclusion 9, paragraph 2, provides a list of materials that may provide evidence of acceptance and recognition that a norm has risen to the level of *jus cogens*. Here, we suggest that the non-exclusiveness of the list should be emphasised, as we do not consider the list to be exhaustive. Furthermore, Slovenia would welcome an additional consideration concerning 'resolutions adopted by international organisations'. We consider that other resolutions could also be relevant, including resolutions adopted by member states within international organisations, or resolutions adopted by widely representative assemblies or conferences of states parties. While resolutions adopted by consensus would naturally signal general support for the resolution, Slovenia proposes that the resolutions adopted by vote also be considered, particularly when the vote is notably in favour of the adopted decision. Such a consideration would also reflect Draft Conclusion 7,

paragraph 3. We also propose that the notion of 'public statements on behalf of states' be further clarified, because not all such statements carry the same weight and consequences under international law. Furthermore, it is not clear what is meant by 'official publications'. Slovenia further suggests evaluating and taking into account the role of the regular denunciation of a behaviour as a means of evidence.

Noting the discussion within the Commission on the future work on the topic, Slovenia wishes to reaffirm that we do not consider the notion of regional *jus cogens* to be compatible with the characteristics of *jus cogens*.

Last, but not least, Slovenia notes that different views were expressed within the Commission on the advisability of establishing an illustrative list of norms that have acquired the status of *jus cogens*. Slovenia shares the view that pointing to examples of *jus cogens* norms fits within the scope of the Commission's work. We consider that an illustrative list based on the legal rationale and prudence would be a useful contribution in the context of the work on the topic.

Turning to the 'Succession of States in respect of State responsibility', Slovenia reaffirms its support for this topic, and compliments the Special Rapporteur on the well-constructed first report on the topic.

Slovenia considers that the Special Rapporteur provided evidence that the traditional theory of non-succession has been challenged by modern practice, or at least that modern international law does not exclude the possibility of any transfer of obligations arising from state responsibility. In this light, Slovenia agrees with the Special Rapporteur that the examples of state practice and jurisprudence cited in the first report support his finding on the evolution of the traditional rule of non-succession. Indeed, cases of state succession are rare and differ to some extent due to the political and historical contexts in which they occur; however, modern approaches in international judiciary decisions and agreements in relation to state succession differ substantially from early cases, as noticed in the first report. Slovenia agrees that additional in-depth research of state practice, including state practice in non-European regions, is needed.

Regarding agreements concerning the succession of responsibility ('succession agreements'), Slovenia supports the suggestion made by some members of the Commission to consider development in the *pacta tertiis* rule in terms of devolution and similar agreements. As already analysed by the Special Rapporteur in the first report, such agreements "may confirm that a successor State is ready to accept obligations arising from State responsibility of its predecessor. *However, they may also limit or exclude such an obligation.* This is why the consent of the third states is important and cannot be presumed in all cases." A question thus remains as to whether certain conditions under such agreements represent the limitation/exclusion of obligation, since the succession of states by its nature influences the position of the injured state, as it changes the number and/or structure of responsible state(s). It cannot be claimed that the position of the injured state remains the same

regardless of the fact of the succession of the responsible state. Before the date of succession, the injured state may invoke the responsibility of the responsible (predecessor) state, whereas, in the case of invocation after the date, rules regulating the extent (and modality) of the succeeded responsibility and rules for different categories of succession are needed in order to evaluate how 'succession agreements' influence the injured state. For example, does agreement between successor states not recognising their joint and several responsibility diminish the invocation entitlement of the injured state? In this regard, Slovenia supports the decision of the Special Rapporteur to propose in subsequent reports a set of rules for different categories of succession.

Slovenia welcomes the Special Rapporteur's intention to pay additional attention to the issue of the plurality of responsible states and the issue of shared responsibility. This should also be done, *mutatis mutandis*, for the plurality of injured states.

In the case of 'succession agreements', we would also propose examining the provisions of constitutions (or constitutional acts) of some federal states, for example, the Constitutional Charter of the State Union of Serbia and Montenegro, as they, too, can be relevant in the context of analysing the right of federal units to secede and determining the consequences of secession.

We also believe that it would be beneficial to consider the interpretation of the succession of states in respect of state responsibility by the European Court of Human Rights (e.g. the case of *Bijelic vs. Montenegro and Serbia*), which is not directly relevant to the present topic, since it concerns the rights of individuals, but could, nevertheless, provide an interesting insight into the interpretation of the matter.

Slovenia wishes the Special Rapporteur good luck in future work.

Regarding the topic 'Protection of the Environment in relation to Armed Conflicts', Slovenia wishes to express support for the continuation of the work on this topic. Slovenia will soon share information on the national legal framework relevant to the topic with the Special Rapporteur and the Commission.

Slovenia would also like to take the opportunity of the new phase of the work on the topic to draw the attention of the Commission and the Sixth Committee to the valuable and highly relevant, recently launched recommendation report, prepared by the Global High Level Panel on Water and Peace under the leadership of Dr. Danilo Türk, former President of Slovenia. The Panel, co-convened by 15 countries, was launched in November 2015 in Geneva with the task of developing a set of proposals aimed at preventing water-related conflicts and leveraging water as an instrument of peace. The report placed an important emphasis on the role of water in armed conflict, which is directly relevant to our discussions. Among other things, the recommendations include encouraging water supply ceasefires during armed conflicts and deploying military water specialists in peace operations to rebuild water supply systems. The report also provides noteworthy ideas on the possible strengthening of global

institutional and legal frameworks in this regard, such as establishing a mechanism to monitor compliance with IHL, studying legislative frameworks for the protection of transboundary water infrastructures against terrorist acts or establishing an independent body to collect information about damaged water supplies and foster technical assistance during protracted armed conflicts. Slovenia therefore invites the Special Rapporteur and the Commission to carefully study the report in the context of the topic before us.

Thank you.