



Permanent Mission  
of the Federal Republic of Germany  
to the United Nations  
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## **Statement by**

**H. E. Ambassador Dr. Christophe Eick  
German Federal Foreign Office  
The Legal Adviser**

**on the occasion of**

**the 73rd Session of the  
United Nations General Assembly**

**6<sup>th</sup> Committee**

**Statement 70<sup>th</sup> ILC Report (2018)**

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**Peremptory norms of general international law (Jus cogens)****Special Rapporteur: Dire Tladi (ZAF)**

Madam Chairwoman/Mr Chairman,

First of all, we would like to thank Special Rapporteur Dire Tladi for his rich and thought-provoking third report on “Peremptory norms of general international law (*jus cogens*)”. This report provides the basis for the discussion of some of the most-debated aspects of *jus cogens*, namely its invocation, consequences and legal effects. Whereas the issue of *jus cogens* already and generally is of paramount importance to the overall architecture of the system of international law, this seems even more the case with regard to questions regarding legal effects and consequences arising from peremptory norms of international law.

Now, allow me to turn to some more specific aspects of the draft conclusions proposed by the Special Rapporteur that were provisionally adopted by the Drafting Committee during its last session:

- First, with respect to **draft conclusion 14**, we agree that the consequences of invoking a conflict with a *jus cogens* norm are far-reaching and could not follow automatically from the mere claim that such a conflict exists. Hence, Germany advocates including a draft conclusion on the procedure for invocation.
- Second, we understand that the debate with respect to the adoption of an **enumerative list of specific jus cogens norms** still remains open. In this regard, we would like to reiterate a point from our last statement of 2017: That is, that such a list might lead to wrong conclusions and bears the risk of establishing a *status quo* that might impede the evolution of *jus cogens* in the future. Consequently, Germany does not consider it necessary for the ILC to undertake the enormously difficult task of adopting such a list.
- Also, please allow for a more general comment with regard to the **procedure** followed by the Commission in its work on this project. We understand that the draft conclusions are currently left pending in the Drafting Committee, without being considered by the plenary on an annual basis with accompanying commentaries, until the conclusion of the first reading of the entire set of draft conclusions. In our view,

this is disadvantageous for several reasons: First, States would not have the opportunity to comment on a considered position of the Commission until the first reading of the entire project. Also, this deviation from the regular practice of the ILC makes it generally more complex and thus more difficult for States to follow and comment on the ILC's work. We would thus agree with the doubts raised by some of the Commission's members in this regard and advocate retaining the usual procedure.

Finally, we are aware that draft conclusions 15 to 23 suggested in the Special Rapporteurs third report have not been preliminary adopted this year and will only be considered by the Drafting Committee next year. However, we would like to use this opportunity to make some preliminary remarks at this stage on the possible adoption of **draft conclusions 22 and 23**. We agree with the concerns raised by several members of the Commission in this regard. In its present form, draft conclusions 22 and 23 would deviate from the scope of the topic, which was to be limited to secondary rules of international law and to focus on the general effect of all rules of *jus cogens*. In our view, it remains unclear why it would be wise to address the effects of a specific subset of rules of *jus cogens* at this point – a fact that the Special Rapporteur had acknowledged himself in his concluding remarks on the topic. Furthermore, not least for reasons of procedural efficiency, we would not consider it prudent to revisit the controversial discussion on exceptions of immunities *ratione materiae* that took place in other ILC projects that are currently still under consideration. Against this backdrop, we would support the proposal made by the Special Rapporteur in his final comments on the deliberation of this topic this year to replace the two draft conclusions with a single “without prejudice” clause.

Madam Chairwoman/Mr Chairman,

Germany will continue to follow this project closely, not least due to its paramount importance for the development of international law.

Thank you.