

# AUSTRALIA



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## Report of the International Law Commission on the Work of its 1( C)9cssm 6n el3- 5 [ )] 041 0 0 1 10778 6n

date.

Australia considers that the draft conclusions provide a useful framework to assist the identification of peremptory norms of international law and their content. The practical approach of the conclusions is necessary to reflect the

dynamic nature of the formation, development, acceptance and recognition of *jus cogens* by States under general international law.

Australia supports in principle the requirement of evidence underpinning whether a norm is accepted and recognised as *jus cogens*. We note this requirement is included in, for example, draft conclusion 6(2), and previously in draft conclusions 8(2) and 9. However, we agree that there may be methodological shortfalls with this approach. This is especially the case if only limited international practice exists to draw on to identify the degree of acceptance and recognition of a specific norm by States.

Given the relative uncertainty regarding whether a particular norm has risen to the level of *jus cogens*, we also query whether inclusion of an illustrative list of such peremptory norms would be of additional benefit to this body of work. In particular, we query whether consensus could be reached on such a list. It may also undermine the objectives sought to be achieved by this work, being clarity around, and agreement on, the criteria to be applied in identifying peremptory norms. Against this background, Australia