



and VIII (Peremptory norms of general international law (jus cogens))

Chair,

1. Thank you for the overview you just provided of the work of the Commission for this cluster of topics. In what follows, I will present to you the comments and observations of my Government with respect to some of these topics.

Chapter VII (Provisional application of treaties)

2. With respect to the topic of 'Provisional Application of Treaties', my Government would like to extend its appreciation to the (1) Special Rapporteur for his fifth report, (2) to the Secretariat for its memorandum providing useful background information, and to (3) the Commission as a whole for adopting the text of the draft Guide to Provisional Application

5. Similarly, we have identified a number of other issues that have not been fully addressed.

1. The Commission is only at the initial stage of considering applications for the proposed services. It would therefore be premature to make any conclusions about the likely impact of the proposed services on the market.

ing this question. We would therefore recommend that the Commission should continue to monitor the market and consider the impact of the proposed services on the market.

and
The Commission is only at the initial stage of considering applications for the proposed services. It would therefore be premature to make any conclusions about the likely impact of the proposed services on the market.

Chapter VIII (Peremptory norms of general international law (*jus cogens*))

9. My government would like to thank the Commission for its work on this topic, and in particular the Special Rapporteur for his thoughtful third report. As the debates in the

Commission have demonstrated, many elements of *jus cogens* remain contested, and this is also true for several aspects relating to the consequences of a violation of *jus cogens*. In this respect, the Kingdom of the Netherlands would share the concern also voiced by other States earlier with respect to the lack of clarity on the concept of *jus cogens* and, in particular, its identification and application.

10. The Kingdom of the Netherlands hopes that the Commission will continuously evaluate its progress on this topic and will not hesitate to return to topics earlier discussed in the light of its conclusions on the specific issues discussed by the Commission this year, as

~~invalidity of a treaty, the parties are released from any obligation further to perform their~~

obligations under the treaty.

~~17. With respect to draft conclusion 14, the proposed procedure regarding the settlement of~~

disputes involving a conflict between a treaty and *jus cogens* resembles the procedure contained in article 66 of the Convention. However, contrary to the article 65 of the Convention, the draft conclusions do not contain procedural rules regarding, amongst ~~others, the invocation of the invalidity of a treaty. Under the Convention, a party invoking~~

Including procedural aspects relating to the invocation of invalidity in the draft conclusions concerning other sources of law and obligations appears to be equally relevant. At least a study into realistic procedural rules for ascertaining claims to invalidity of other sources of law and of obligations than treaties should be considered.

20. Regarding the future work of the Commission on this topic, the Kingdom of the Netherlands reiterates its position that it prefers not to include a list of *ius cogens* norms. The

authoritative nature of a list, illustrative or otherwise, composed by the Commission would in all likelihood prevent the emergence of State practice and *opinio juris* in support of other norms. If the inclusion of a list is nevertheless considered necessary, my government would

refer to the commentaries on articles 26 and 40 of the Articles on the