



Statement
on behalf of the Republic of South Africa
by
Her Excellency Ms Mathu Joyini
Permanent Representative

before the Sixth Committee of the 77th Session
of the United Nations General Assembly

Under Cluster 1

**³Peremptory Norms of General International
Law (jus cogens); Protection of the
Environment in relation to Armed Conflicts and
Other Decisions)**

New York, 26 October 2022

Chairperson

My delegation wishes to express our deepest appreciation to the Special Rapporteur, Mr Dire Tladi, and would like to congratulate him together with the members of the International Law Commission³ & R P P L V V L R Q V ' U D I W & R Q F O X V L R Q V R Q L G H Q W L I for their excellent work on this important topic³ 3 H U H P S W R L s of General International Law (jus cogens), and the adoption of the Draft Conclusions. We commend the Special Rapporteur on the diligent work in considering the comments and observations submitted by States.

Chairperson

Our government appreciate the opportunity to submit its comments and observations R Q W K H & R P P L V V L R Q V ' U D I W & R Q F O X V L R Q V R Q L G H Q W L I peremptory norms of general international law (jus cogens), together with the Commentaries including the annex which contains a non-exhaustive list of peremptory norms of general international law (jus cogens), adopted on the second reading by the Commission.

South Africa supports the Draft Conclusions and wishes to highlight that this statement must be read together with our previous comments and observations on the text of the Draft Conclusions.

Chairperson

South Africa is pleased that Draft Conclusion 2 was retained following our previous comment, which was incorporated in W K H 6 S H F L D O 5 D S S R U W b e X e V I L I W K that describing the distinctive nature of these norms, will be a useful tool to better understanding of peremptory norms (jus cogens).

Chairperson

On the national level, our courts have relied on the same characteristics as adopted by the Commission in its Draft Conclusion 2, and in the decision of Minister of Justice and Constitutional Development and Others v Southern African Litigation Centre and Others (2016), the Constitutional Court held that torture, the international crimes of piracy, slave-trading, war crimes, crimes against humanity, genocide and apartheid required states, even in the absence of binding international treaty law to suppress such conduct, because all states have an interest as they violate values that constitute the foundation of the world public order.

Chairperson

South Africa notes that paragraph 2 of Draft Conclusion 5 was retained in its previous form, in which treaty provisions are identified as basis for peremptory norms. Nonetheless, we remain unconvinced by the ambiguity of the Commission's treatment of treaty provisions as basis for jus cogens. We note the suggestion at various places in the commentary to suggest that treaty provisions can only form basis of jus cogens to the extent that such provisions reflect customary international law. Yet, we believe that this ought to be made clear in the text of the Draft Conclusions,

Chairperson

South Africa welcomes the Commission's intention to amend paragraph 2 of Draft Conclusion 7, which we generally believe that it will strengthen the understanding of the type of majority needed to qualify for the acceptance and recognition requirement.

Chairperson

South Africa supports the Draft Conclusion 16, and we are pleased with the position taken by the Commission in confirming that the resolutions, decisions, or other acts adopted by the United Nations Security Council under Chapter VII of the Charter of the United Nations are subject to peremptory norms of general international law (jus cogens).

We further share the view that the resolutions/decisions of the UNSC should have been explicitly mentioned in the text of the Draft Conclusion. However, the Draft Conclusion in its current form provides for a broader application of the resolutions, decisions or other acts of international organizations and their organs, which includes those adopted by the UNSC.

Chairperson

South Africa is encouraged by the further clarity provided on the Commentaries, in particular to paragraph (5), by the Commission in its attempt to elaborate and explain the procedure that States should follow as set out under Draft Conclusion 21, prior to adopting any measure of a belief that a binding UNSC resolution is in conflict with jus cogens.

Chairperson

The Commission's intention not to introduce an exclusive list of consequences, but to rather identify additional consequences which flows from breaches of jus cogens that meet the threshold under paragraph 3 of the Draft Conclusion 19, a fact which is also shared in paragraphs (17) and (18) of the Commentaries.

However, we believe that with the inclusion of the word "serious" in Draft Conclusion 19 still implies an existence of other or non-serious breaches of peremptory norms of general international law (jus cogens), taking into consideration paragraph (1) of the Commentaries, in which the Commission have expressly provided that Draft Conclusion 19 is not aimed at addressing consequences of breaches of peremptory norms that are not serious in nature.

Chairperson

South Africa wishes to note the inclusion of examples of resolutions adopted by organs of international organizations which illustrated the duty to cooperate to end serious breach of obligations, which the Commission elected to include in the Commentaries, while others are recorded in the footnotes.

Chairperson

South Africa welcomes the further clarity provided by the Commission in its Commentaries on the list of peremptory norms, following the second reading of Draft Conclusion 23. We continue to support the contents of the Draft Conclusion, especially with the view adopted by the Commission, that the inclusion of a list on a without prejudice basis is not intended to exclude the existence at present of other norms that

My delegation has considered the ILC proposed 28 draft principles including measures for prevention of environmental damage during armed conflicts and redress of the damages in the aftermath. These principles are important as they can strengthen the capacities of the international community to protect the environment in the context of armed conflicts.

In this regard, we welcome the inclusion of the Preamble which urges the member States to enhance the protection of the environment in relation to both international and non-international armed conflicts, including in particular that States should designate, by agreement or otherwise, areas of environmental importance as protected zones in the event of an armed conflict, including where those areas are of cultural importance. While the principle applies to States only, it would have been valuable if the principles apply to all parties to the armed conflicts.

The impact to environment often begins long before war starts. The means used for training and testing in preparation for war often cause harm in the environment. Training and testing of weapons can create emissions, chemical and noise pollution. It can also disrupt landscapes. The disposal of these weapons through dumping is

South Africa attaches great importance on measures and actions aimed at removing hindrances to the full realisation of the right of self-determination of peoples living

