



## PERMANENT MISSION OF SLOVENIA TO THE UNITED NATIONS

No: NI23/21

The Permanent Mission of the Republic of Slovenia to the United Nations presents its compliments to the Secretary-General of the United Nations and with reference to its Note Verbale LA/COD/67, dated 22 September 2020, expresses its appreciation for the opportunity to submit comments and observations in accordance with paragraph 54 of the Report of the International Law Commission (ILC) (A/74/10) on ILC Draft Conclusions on peremptory norms of general international law (*jus cogens*), adopted on first reading by the ILC.

1. The Republic of Slovenia expresses its appreciation to the members of the ILC and the Special Rapporteur Mr Dire Tladi for the work done on the topic in an attempt to clarify the definitions, general nature and methodology of identification of the peremptory norms of general international law (*jus cogens*) at the legal effects thereof.

2. With regard to Draft Conclusion 3 the Republic of Slovenia supports the notion that the peremptory norms reflect and protect fundamental values of the international community and are hierarchically superior to other rules in the sense that other rules of international law must be in accordance with the peremptory norms of general international law (*jus cogens*) in order to be or remain valid. In order to fulfil the function of reflecting and protecting the fundamental values of the international community, these norms must also be universally applicable.

3. The Republic of Slovenia cannot envisage a treaty norm that could evolve directly into a peremptory norm of general international law (*jus cogens*), without obtaining the status of customary international law norm first. It is therefore suggested that the words "most common" in the first paragraph of the Draft Conclusion 5 be deleted. The Republic of Slovenia also suggests that the word "bases" is replaced with the word "sources" in both paragraphs of Draft Conclusion 5. That would align the wording of the paragraphs with the terminology usually associated with Article 38 of ICJ Statute on sources of international law and also more precisely address the status of a treaty provision and general principles of law in the formation of peremptory norm of general international law (*jus cogens*). Treaty provisions and general principles of law can serve as sources of norms that acquire the status of peremptory norms of general international law (*jus cogens*) by way of acquiring customary law status first.

**H.E. Mr António Guterres**  
**Secretary-General of the United Nations**  
**(Office of Legal Affairs)**

**New York**

4. The Republic of Slovenia supports the formulation of the Draft Conclusion 7. It is the opinion of states that is decisive for the determination of the peremptory character of a norm and this opinion does not need to be unanimous. If unanimity was required, it could lead to no norm ever being characterised as peremptory norm of general international law (*jus cogens*), with every State effectively having veto power on the issue. However, due to the consequences of the characterisation of a norm as peremptory, the acceptance and recognition of a norm as a peremptory norm of general international law (*jus cogens*) has to be expressed by a very large majority of states.

5. With regard to Conclusion 9 on Subsidiary means for the determination of the peremptory character of norms of general international law the Republic of Slovenia would like to point out that in paragraph 2 the works of expert bodies established by states or international organisation are cited as additional to the teachings of the most highly qualified publicists. While recognizing the importance of these formations set up by States, they are predominantly filled with experts that are supposed to keep their independence. That means their opinions are not opinions of States but of independent experts. The Republic of Slovenia believes that the works of expert bodies are therefore included in the category of teachings of the most highly qualified publicists and need not be singled out in the text of the draft conclusion. Removing them would also align this paragraph more closely with the wording of Article 38 of ICJ statute on sources of international law. The Republic of Slovenia does however support the inclusion of "works of expert bodies established by States" in the commentary to this draft conclusion.

6. With respect to Draft Conclusion 14 the Republic of Slovenia would appreciate some additional clarification on paragraph 1 on the process of modification of a peremptory norm of general international law (*jus cogens*). As provided under Draft Conclusion 5 the position of the Republic of Slovenia is that peremptory norm of general international law (*jus cogens*) can only arise from a norm of customary international law. Since the first sentence of Draft Conclusion 14 stipulates that a rule of customary international law cannot come into existence if it conflicts with a peremptory norm of general international law (*jus cogens*) it is unclear on how a peremptory norm can be modified by a subsequent norm of general international law having the same character in any way, except to make an existing rule broader.

7. The Republic of Slovenia supports the wording of the Draft Conclusion 16 since the rules that obtain the status of peremptory norms of general international law (*jus cogens*) reflect and protect the most fundamental values of the international community and are therefore binding on all international organisations and their organs. That is even more important when these organs are mandated to maintain international peace and security, such as the United Nations Security Council. The Security Council operates in the most sensitive situations, where there is a possibility of conflict with peremptory norms of general international law (*jus cogens*) and should remain mindful to adhere to the rule of law, especially peremptory norms.

8. The Republic of Slovenia appreciates the effort that the Commission has put into establishing a mechanism in Draft Conclusion 21 that in general follows the procedure under

Articles 65 to 67 of the Vienna Convention on the Law of Treaties, yet takes into account the reservations that many states have lodged with regard to the jurisdiction of the International Court of Justice while still protecting legal certainty and the providing possibility to "cure" a potential situation where a rule would be in conflict with a peremptory norm of general international law (jus cogens).

9. The Republic of Slovenia welcomes Draft Conclusion 23 and the inclusion of the non-exhaustive list of norms that have been previously identified as peremptory norms of general international law (jus cogens) in the Annex. Regarding item a) of the Annex: prohibition of aggression, the Republic of Slovenia is of the opinion that the term is outdated and it can limit the provision to the definition of aggression in resolution 3314 (XIX). The Republic of Slovenia would prefer wording more in line with the provision of Article 2 paragraph 4 of the UN Charter on the prohibition of threat or use of force in any manner inconsistent with the UN Charter. On item d) basic rules of international humanitarian law, the Republic of Slovenia would appreciate a more comprehensive commentary, since the rules of IHL are a wider category of rules and not all of them have been identified as peremptory norms of general international law (jus cogens).

10. The Republic of Slovenia would also suggest that the Commission re-examines its previous work for instances where it identified provisions as peremptory norms of general international law (jus cogens) and adds them to the list.

The Permanent Mission of the Republic of Slovenia to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration. *Bm*

New York, June 30, 2021