
Translated from Spanish

Division of Public International Law
Ministry of Foreign Affairs
Republic of Paraguay

Report

Specific issues on which comments would be of particular interest to the Commission

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E. *Jus cogens*

31. The Commission would appreciate being provided by States with information, relating to their practice on the nature of *jus cogens*, the criteria for its formation and the consequences flowing therefrom as expressed in:

(a) official statements, including official statements before legislatures, courts and international organizations; and

(b) decisions of national and regional courts and tribunals, including quasi-judicial bodies.

Comments: The concept of *jus cogens* is found in articles 53 and 64 of the Vienna Convention on the Law of Treaties, which read as follows:

"53. Treaties conflicting with a peremptory norm of general international law ("jus cogens"). A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

“64. Emergence of a new peremptory norm of general international law (“jus cogens”). If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.”

Without referring specifically to the nature of *jus cogens*, the criteria for its formation and the consequences flowing therefrom, the Republic of Paraguay has referred, in statements before the United Nations General Assembly, to fundamental principles of international law.

For example, in his statement before the General Assembly at its twenty-third session, on 23 October 1968, the then Permanent Representative of Paraguay, Miguel Solano López, referred to the principle of respect for sovereignty and territorial integrity in the following terms:

"I think there are few States Members of the United Nations which have adhered so firmly to the principle of respect for sovereignty and territorial integrity as mine, which has carried its support to the limits of individual and collective sacrifice. Much time has passed since the era we regard as the epic period of our history; but a basic duty to ourselves, to our past and to the traditions of which we are so proud determined the position which we adopted in the Security Council and which we reaffirm here."

With regard to other principles of international law, it is also appropriate to mention the statement made by the Permanent Representative of Paraguay, Francisco Barreiro, before the General Assembly at its twenty-eighth session, on 24 September 1973, as follows:

"Let us hope that the solution of international conflicts will always be based on respect for the free and sovereign existence of nations, the self-determination of peoples, the impossibility of waging war for military, economic or ideological conquest and on the elementary principle of coexistence and non-intervention in the internal affairs of sovereign States."

In the area of national case law, the Supreme Court of Justice, the highest judicial authority of the Republic of Paraguay, observed that the concept of *jus cogens* consists of "fundamental and non-derogable rights", which is consistent with the spirit of the Vienna Convention.

In its decision and judgement No. 195/2008 of 5 May 2008, the Supreme Court of Justice stated that:

"It is a great contemporary achievement to have defined crimes against humanity, a concept that embraces not only international human rights law but also international criminal law, when it reflects - and makes possible - the universal condemnation of grave and systematic violations of fundamental and non-derogable rights, in other words, breaches of *jus cogens*. That is why statutes of limitations under internal or national legal systems are not applicable in the event of such violations".
