

Written comments by the Republic of Cyprus on the International Law Commission's draft conclusions on peremptory norms of general international law (*jus cogens*)

Introduction

The Republic of Cyprus welcomes the work of the International Law Commission (ILC) on peremptory norms of general international law (*jus cogens*) and the adoption of draft conclusions on first reading at the Commission's seventy-first session, and appreciates the opportunity to submit its comments and observations on the topic.

Taking into consideration the fundamental role of peremptory norms in the interpretation and application of international law, the Republic of Cyprus would like to express its support to the work of the ILC on this topic and its commitment to the further development of the draft conclusions under discussion.

The Republic of Cyprus stresses the hierarchical superiority of peremptory norms compared to other rules of general international law, their non-derogable character and their universal application. Moreover, we strongly believe that we must uphold the current threshold with respect to the formation of peremptory norms, namely that they must be accepted and recognised by the international community of States as a whole. Lastly, the Republic of Cyprus stresses that treaties must be interpreted in a manner consistent with peremptory norms.

Comments

1. The Republic of Cyprus shares the Commission's comments on the definition, general nature and criteria for the identification of peremptory norms of general international law (Draft Conclusions 2, 3 and 4). In particular, we support the view that for a norm to be deemed a peremptory norm it must be a norm of general international law protecting fundamental human values, "accepted and recognised by the international community of States as a whole as one from which no derogation is permitted", in line with Article 53 of the 1969 Vienna Convention on the Law of Treaties (VCLT) (see more on the

threshold for recognition below in comment on Draft Conclusion 7). We underscore that peremptory norms are hierarchically superior to ordinary rules of international law, according to international and domestic case law, as well as State practice. Additionally, the Republic of Cyprus shares the view that peremptory norms are universally applicable, namely that they are binding on all subjects/users of international law, as elaborated in international and national jurisprudence.

2. With respect to Draft Conclusion 7 (International community of States as a whole), the Republic of Cyprus agrees that the main entities whose acceptance and recognition is relevant for the formation of peremptory norms of general international law are States, without disregarding the subsidiary role of other subjects/users of international law, such as international organisations. What is more, the Republic of Cyprus would like to emphasise its adherence to the position that for the surfacing of a peremptory norm of international law what is necessary is the “acceptance and recognition by the international community of States as a whole”, namely “a very large majority of States” but not of all States. Irrespective of the pivotal role of State consent in international law, we strongly believe that the threshold for acceptance and recognition should remain as it stands and not to be lowered. Given the importance of the fundamental values peremptory norms intend to safeguard, we need to ensure that a handful of States would not be able to stymie the emergence of a peremptory norm of international law.
3. Bearing in mind that peremptory norms are hierarchically superior to ordinary rules of international law, universally applicable and non-derogable, the Republic of Cyprus supports the view that a State cannot be “persistent objector” to a peremptory norm (Draft Conclusion 14). Accepting the application of the “persistent objector” rule to peremptory norms would contradict and undermine the very essence of the latter concept and negate its constitutive elements.
4. In light of the hierarchical superiority of peremptory norms, the Republic of Cyprus shares the view that peremptory norms prevail over resolutions, decisions or other acts of international organisations (Draft Conclusion 16). What is also important is that the scope of draft Conclusion 16 is broad enough to encompass acts of the Security Council. This

point highlights the significance of peremptory norms and the fundamental values reflected therein as even the acts of the primary organ of the United Nations give way to such rules.

5. The Republic of Cyprus attaches great importance on the consequences of serious breaches of peremptory norms (Draft Conclusion 19). In this respect, we would like to recommend that the Draft Principles extend beyond the 1969 Vienna Convention on the Law of Treaties so as to include the Responsibility of States for Internationally Wrongful Acts. Again, having in mind the fundamental values that peremptory norms protect, the Republic of Cyprus underlines the customary obligation to cooperate to bring to an end serious breaches of obligations stemming from such rules. Along a similar vein, States are also obliged to make efforts individually to end any unlawful results deriving from a violation of peremptory norms. In addition, States are under an obligation to refrain from assisting and/or recognising as lawful a situation occurring from a breach of peremptory norms. The customary character of the duties of cooperation, non-recognition and non-assistance entails that States must perform those duties regardless of the existence of a judicial or political decision (*i.e.* Security Council resolution) calling them on to do so.
6. Finally, the Republic of Cyprus would like to thank the International Law Commission and the Special Rapporteur, Mr. Dire Tladi for his work on such a significant topic and we reiterate our readiness to contribute to the further elaboration of the matter.