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**Permanent Mission of Finland
to the United Nations**

Joint Nordic comments and observations on the ILC draft conclusions on peremptory norms of general international law (*jus cogens*)

The Nordic countries, Finland, Iceland, Norway, Sweden and Denmark, would like to thank the International Law Commission and the Special Rapporteur Dire Tladi for the excellent work conducted on this significant file. We would also like to express our appreciation for the opportunity to submit written comments and observations on the draft conclusions on peremptory norms of general international law (*jus cogens*), as adopted by the Commission on first reading in 2019.

Peremptory norms of general international law is an important topic with potential significant effects, not only on the understanding of international law as a legal system, but also with possible practical effects, the extent of which remains, as of yet, unclear. As we have stated earlier, it is in our view a topic that does not easily lend itself to codification, considering the relatively limited and varying State practice. This calls for a cautious approach when moving forward.

Therefore, while the conclusions will undoubtedly be useful guidance for practitioners, we continue to hold the view that the topic of peremptory norms is best dealt with by the Commission through a conceptual and analytical approach rather than with a view to elaborating a new normative framework for States. In this context, we believe that the conclusions should be kept closely aligned with established and well-founded interpretations on the consequences and effects of *jus cogens* norms.

In view of possible further refinement of the draft conclusions, we hereby submit the following comments and observations to the Secretary-General:

We believe that further clarification of the draft conclusions pertaining to the identification of peremptory norms would be useful. This would help ensure accurate application of the norms of peremptory quality. An example of a draft conclusion, which in our view would benefit from some further clarification, is draft conclusion 3, which is situated in between draft conclusions containing the definition and identification of peremptory norms, respectively. We fear that the draft conclusion 3 could, because of its location in the text, be read as additional criteria for identification of such norms. However, we also note that paragraph 16 of the commentary to this draft conclusion also correctly states that “The characteristics contained in draft conclusion 3 are themselves not criteria for the identification of peremptory norms of general international law (*jus cogens*)”.

Furthermore, we believe that certain draft conclusions would benefit from a clear definition of scope regarding relevant actors. This is for example the case with the term “other actors” in draft conclusion 7, paragraph 3, where it would be particularly useful to be clear, considering the mentioning of the possibility of actors other than States and international organizations determining jus cogens. The paragraph 2 of commentary to draft conclusion 7 does in this regard rightly state that “it is the position of States that is relevant and not that of other actors”. Finally, the same need for clarity is in our view the case regarding draft conclusion 9, stating that “The works of expert bodies established by States or international organizations and the teachings of the most highly qualified publicists of the various nations may also serve as subsidiary means for determining the peremptory character of norms of general international law”. In our view, the question of the role that these organs might have in determining jus cogens should be approached with caution, even if their role is subsidiary. We believe that it should be carefully considered whether the definition could be narrowed down in order to accurately include relevant bodies.

The Nordic countries continue to have reservations against the non-exhaustive list of jus cogens norms in the annex to the draft conclusions, as stated during previous Sixth Committee meetings. We note that according to draft conclusion 23 the list is “Without prejudice to the existence or subsequent emergence of other peremptory norms of general international law”. However, we believe that such a list, even if non-exhaustive, could risk preventing the emergence of State practice and *opinio juris* in support of other norms.

The Nordic countries would once again like to thank the International Law Commission and Special Rapporteur Mr. Dire Tladi for the important work undertaken on this topic until now. We hope the above comments and observations will be of value to the further work regarding peremptory norms of international law.