

Report of the International Law Commission on the work of its sixty-eighth session
(Cluster II)

Comments by Canada

Mr. Chairman,

Thank you for this opportunity to address the highly relevant work of the International Law Commission on the topics of *jus cogens* and the protection of the atmosphere.

Canada would like to express its appreciation for the work of the Commission on the topic of *jus cogens*. Canada also acknowledges that the Commission has been instrumental in the development, acceptance and mainstreaming of *jus cogens* in international law.

The Special Rapporteur's proposal for the Commission to undertake a thorough analysis of the variety of practice related to *jus cogens* is timely, and we look forward to the greater clarity that this will provide about peremptory norms.

As it has been noted, it will be very important that any definition of *jus cogens* be in-line with the 1969 *Vienna Convention on the Law of Treaties*. As such, it should not result in, or be interpreted as, a deviation from the 1969 *Vienna Convention*. That being said, Canada agrees that it would be beneficial for the Commission, in its analysis of *jus cogens*, to extend the idea of the acceptance and recognition of a peremptory norm by states to also include other entities, such as international and non-governmental organizations, and the international society more broadly.

With regards to the possibility of developing an illustrative list of norms that have acquired the status of *jus cogens*, Canada believes that this would be a helpful exercise, as long as it focuses on the most widely-accepted norms, which cannot be contracted out of by States. *Jus cogens* norms develop with the changes in the international community, therefore this list should be seen as more of a subset of examples of the most widely-accepted peremptory norms and not a final or exclusive list.

Mr. Chairman,

While Canada sees the benefit of analyzing the concept of regional *jus cogens*, we would like to stress the importance of distinguishing this exercise from that of universal *jus cogens* norms. The methodology for these two areas of analysis will need to be very clear, so as to establish the differences between these two concepts and avoid diluting the strength and legitimacy of universal peremptory norms.

In addition, if the Commission decides to also pursue a comparison between *jus cogens* and *jus dispositivum*, it will need to be very clear about the justification for such an analysis, and how these two concepts differ.

Canada looks forward to the continued work of the Commission on *jus cogens*. We are hopeful that the future research into *jus cogens* norms will lead to greater clarity on the current peremptory norms and the requirements for establishing these norms for the international community going forward.

Canada would also like to thank the Commission for its work on the Protection of the Atmosphere. Canada has followed with interest the work of the Commission on this important topic. Canada believes that it would be helpful to clarify how the 2013 understanding will be applied to the Commission's future work on this topic. While not wishing to comment too extensively on the specifics of the proposed guidelines, we would nevertheless mention that some of the provisions raise questions, such as the scope and objectives.

Thank you Mr. Chairman.