



# PORTUGAL

## 72th General Assembly

**Statement by**

**Deputy Permanent Representative**

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

**Minister Plenipotentiary Cristina Pucarinho**

**Sixth Committee**

**Agenda item 81**

**Report of the International Law Commission**

**Cluster III**

Mr. Chairman,

I will start my intervention by addressing the topic of **Peremptory norms of general international law (jus cogens)**. Allow me to commend the Special Rapporteur, Mr. Dire Tladi, on his second report. Besides offering a comprehensive summary on the previous consideration of the topic, the report efficiently puts forward the criteria for the identification of a norm of *jus cogens* and presents constructive proposals.

Mr. Chairman,

Portugal continues to support the debate on *jus cogens* by the Commission. The idea of superior rules in a horizontal legal system is not contradictory. Instead, it contributes to secure the principles which are the very fabric of such system – and, by doing so, to preserve the essence of international public order itself.

We are glad to see that the Commission has been approaching the topic with enough caution and pragmatism, ensuring that no damage comes to the notion and the reputation of *jus cogens*.

Mr. Chairman,

We commend the Commission on its inclination regarding a progressive approach to *jus cogens*. Portugal has stated before its conviction that *jus cogens* derives from and stands for fundamental values of the international community. Those core values are the ones whose compliance is indispensable for the peaceful coexistence and fruitful cooperation within the community. Such values can be recognized in several forms of State's and International Organization's practice, as well as in jurisprudence of international courts and tribunals.

*Jus cogens* is both the evidence and the shield of the minimal common legal standards that States and International Organizations, taken as a whole, agree upon. We take good note of the Commission's broad view that *jus cogens* can therefore be drawn from all sources of international law, and not only from treaty law.

Mr. Chairman,

We do not believe that having an illustrative list could impair the development of *jus cogens*. We are confident that progressive development will be the rule in the evolution of *jus cogens*.

An illustrative list might be useful if it includes a short body of the norms and principles embodying the minimal yet most fundamental commitment of States and International Organization's towards one another. Obligations *erga omnes* bear witness to the existence of and belief in such norms and principles. We are aware that even a short list of the most widely recognised imperative norms could raise complex questions. However, we do not see such complexity as a reason to hamper the Commission to engage in such endeavor.

We maintain that the focus of the Commission on identifying criteria for *jus cogens* will bring about substantial theoretical developments. This should shed good light on the matter so that *jus cogens* becomes more perceptible to more actors.

Mr. Chairman,

Portugal will continue to follow the work of the Commission on this topic with interest. We look forward to learn the Commission's views on the consequences and effects of *jus cogens*.

Mr. Chairman,

Allow me now to turn to the topic "**Succession of States in matters of State Responsibility**". Portugal welcomes the inclusion of this topic in the programme of work of the International Law Commission and wishes to thank the Special Rapporteur, Mr. Pavel Šturma, for the work developed in his first Report. The Report shed light on many of the questions raised by this topic and it also showed the complex and sensitive nature of this subject.

Mr. Chairman,

The Commission seems to approach this topic as a zone of intersection of two areas of international law that have been already studied by the Commission: that of Succession of States and that of International Responsibility. Having this starting point,

the Commission will search the existence of general rules or principles governing both the succession of states and international responsibility and then produce a set of draft articles. This approach shows a parallel with the work developed in other topics related with the effects of the succession of States (namely the themes of the Succession of States in respect of Treaties, Succession of States in respect of State Property, Archives and Debts and the Succession of States in respect of Nationality).

Mr. Chairman,

In our understanding, the Commission's analysis should be centered on the succession of States, a phenomenon that impacts countless dimensions of statehood: state responsibility is only one of those dimensions. Any conclusion on the effect of the succession of States in State responsibility can only be reached after a deep and comprehensive analysis on the law and practice of the succession of States. The work developed by the Commission in other topics related with the effects of the succession of States – namely in respect of Treaties, in respect of State Property, Archives and Debts, as well as in respect of Nationality – is certainly very useful in such exercise.

We support the Commission's view that further research of case-law and of State practice is needed concerning State responsibility in cases of succession of States. Indeed, the practice on this matter is extensive and diverse. That is why we suggest the Commission takes a few steps back in this process and examine such practice without the predetermined goal of assessing the existence of general rules or principles regarding State responsibility.

Mr. Chairman,

Portugal shares the position that it is premature to decide on the final form of the project while the substantive part of the topic is not fully explored. So, even if the Commission keeps on working on the draft articles for now, that should be without prejudice of a final decision at a later stage on the most effective form to treat this topic.

We look forward to resuming this topic next year and discuss the draft articles the Commission wishes to propose after its careful consideration.

Mr. Chairman,

Please allow me to finish my intervention by congratulating Ms. Marja Lehto for her appointment as Special Rapporteur for the topic «**Protection of the environment in relation to armed conflicts**».

Portugal is confident that, under the guidance of the new Special Rapporteur, the Commission will give continuity to the work conducted so far and that the final outcome of the ILC's work on this topic will have a positive impact on the protection of human beings and the environment by contributing to the limitation of the effects of armed conflicts.

Thank you, Mr. Chairman.