



Republic of Cyprus

71st Session of the United Nations General Assembly

**Report of the International Law Commission on the work of its sixty-eighth session
(Agenda item 78)**

Cluster I: Chapter V (Identification of Customary International Law)

Cluster II: Chapter IX (*Jus Cogens*)

Concerning Chapter V on the **Identification of Customary International Law**, allow me to commend topic. We take note of the completion of the first reading of the 16 draft conclusions together with draft commentaries.

On the notion of the persistent objector we would like to recall our previous comments, and would like to reiterate our concerns regarding the proposed draft conclusion 15, which have to do *inter alia* with the fact that available international jurisprudence has largely dealt with the matter in *obiter dicta* and in cases where the rule in question had, at the time considered, not acquired the status of customary international law. We, therefore, hold that it would be premature to develop a conclusion on this issue.

para. 4 of the commentary refers to, is an issue that merits elaboration, given its implications on the very authority of the principle.

Further, the issue of the inapplicability of the concept not just to *jus cogens* but also to other kind of rules of fundamental importance, is another aspect that needs to be further reflected upon in the framework of this work, given also the significant amount of support to this end.

In addition, the work so far has not dealt with the temporal aspect of whether an objection can be maintained in the long run, and especially after a rule has developed from an emerging rule to being part of the corpus of customary international law. In terms of state practice, we have seen numerous examples where states abandon their initial objections in order to accept rules that are moving towards crystallization.

At any rate, a state invoking the persistent objector concept shall be under a duty to present solid evidence of its long-standing and constant opposition to the rule under concern in any given case prior to its crystallization. This is well reflected in the work so far.

We request that the Special Rapporteur and the Commission, address these matters, including the

Cyprus attaches great importance to furthering work on this topic. My delegation has been an early and active proponent of the notion of peremptory norms / *jus cogens* in international law in repeated statements in the Sixth Committee and in the Vienna Conference on the Law of Treaties, as reflected also in footnotes in the Report of Special Rapporteur. Let me recall that the Cypriot member of the International Law Commission at the time, Ambassador Andreas Jacovides, made a proposal in 1993 for the inclusion of *Jus Cogens* in the ILC's Programme of Work and supported it by full