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Statement by

Mr. Mohammad Sadegh Talebizadeh Sardari,

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before the Sixth Committee of the

77<sup>th</sup> Session of the United Nations General Assembly

on

Agenda item 78:

Report of the International Law Commission on the work of its

Seventythird session

Cluster I

Chaps I, II, III, IV (Peremptory norms of general international law

(jus cogens), V (Protection of the environment in relation to armed

conflicts), and X (Other Decisions)

New York, 25 October 2022

Mr. Chairperson,

Distinguished members of delegates

We would like to express our appreciation to the Special Rapporteur, Mr. Dire Tladi, for his extensive work on this topic and preparation of his fifth report on the Peremptory norms of general international law (Jus Cogens). My delegation also commends the Commission's work on this topic for providing guidance and recommendations on the identification and nature of the peremptory norms of general international law as well as their consequence and legal effects.



Before expressing our views on the provisions of the Draft Conclusions on identification and legal consequences of the peremptory norms of general international law, we would like to briefly make two general comments

Firstly, with regard to the nature of the Draft Conclusions, it appears that the ILC has never determined in its three recent works, i.e





prioritized over other sources; rather, in conformity with ICJ's approach all the sources should be considered collectively and generally in identifying the norms of peremptory character.

Mr. Chairperson



if they are not binding may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of *opinio juris*. To establish whether this is true of a given General Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it is also necessary to see whether *opinio juris* exists as to its normative character. Or a series of resolutions may show the gradual evolution of the *opinio juris* required for the establishment of a new rule (paragraph 70).

Mr. Chairperson

As concerns the draft conclusion 7 regarding international community of States as a whole, from our point of view, the standard for the identification of Jus Cogens norms is the acceptance and recognition by the international community of States as a whole the same wording of the 1969 VCLT, should be maintained throughout the whole text of the draft conclusions. For the sake of clarification, the Islamic Republic of Iran believes that the phrase "a very large majority of States" does not indicate a numerical value, rather it should be read as accepted and recognized by majority of all the legal systems in accordance with Draft conclusion 3 of ILC's Consolidated text of draft conclusions on General Principles of Law.

As respects the Draft conclusion 12 on consequences of the invalidity and termination of treaties conflicting with a peremptory norm of general international law since according to article 53 of the 1969 VCLT if a treaty at the time of its conclusion conflicts with a peremptory norm of general international law the whole treaty would



be null and void we are of the conviction that it will not grant acquired rights to a third party

Mr. Chairperson

Concerning the paragraph 3 of draft conclusion 14 of Rules of customary international law conflicting with a peremptory norm of general international law, the commentary states that the persistent objector rule does not apply to peremptory norms of general international law, contrary to the standard mentioned in draft conclusion 7 i.e., the acceptance and recognition by the international community of States as a whole. In this regard, the International Court of Justice asserts in paragraph 74 of the 1969 judgment of North Sea Continental Shelf Cases (Germany vs. Denmark/Netherlands) that State practice is an indispensable requirement for the formation of a rule of customary international law which must be both extensive and virtually uniform. The ILC should have taken into consideration that while the persistent objection of certain States to a rule of customary international law is relevant in the process of its formation, particularly when custom is regarded as the most common source of identification, it could be as well relevant in the process of identifying peremptory norms of general international law. In other words, the standard for establishing *ius cogens* can be no less than what is required to establish customary international law.

Mr. Chairperson

As respects the draft conclusion 15, it is noteworthy that according to ILC § 2011 Guide to Practice on Reservations to Treaties a reservation is considered as a unilateral made by a State or an



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Resolution 1267 dated 15 October 1999 which the Court of First



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Mr. Chairperson

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