



**Sixth Committee – Agenda item 77-I
Report of the International Law Commission
Peremptory norms of general international law (jus cogens)**

**Statement by the Federal Republic of Germany
25 October 2022**

Madam Chairwoman/Mr Chairman,

Germany would first and foremost like to express profound gratitude to Special Rapporteur Dire Tladi for his comprehensive and thorough fifth report on “Peremptory norms of general international law (jus cogens)” and for the dedication he has shown to this project. Germany deeply appreciates the work the ILC has done on this extremely pertinent topic and commends the Commission on having adopted these draft conclusions on second reading. The issue of jus cogens and the legal effects and consequences arising from such norms continue to be of preeminent significance to the international legal order.

Allow me to turn to some more specific aspects of the draft conclusions and the commentary thereto:

We wish to reiterate once again the point that the adoption of an enumerative list of specific jus cogens norms might lead to wrong conclusions and bears the risk of establishing a status quo that might impede the evolution of jus cogens in the future. The list has remained in the draft conclusions as they have been passed on second reading. We have previously taken positive note of the “without prejudice” clause in draft conclusion 23 and the emphasis made that the list is non-exhaustive; however, our concerns regarding the necessity and usefulness of such a list – which we had expressed on several previous occasions – remain. We believe that the commentary to conclusion 23, which states that the norms listed were not determined using the methods laid out in the present draft conclusions, does not add persuasive power to keeping the list in the

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The general outcome of the project:

1. Germany would like to express its sincere appreciation for the Commission's work on

6. Germany continues to consider the distinction between those principles that are a reflection of established international law and those that constitute

relationship between the environment and the health of human beings, great care needs to be taken when introducing the concept of “humanity” to the topic of protecting the environment. As such, Germany appreciates both the relevance of the interconnectedness of these elements, and the fact that the reference to “principles of humanity” constitute an integral part of the Martens clause. Nevertheless, Germany continues to see the risk that the inclusion of the term “principles of humanity” may blur the distinction between the concepts of humanity and of nature. As we have stated before, it may be useful to clarify that the inclusion of the principle of humanity shall not lead to a humanization of the concept of “nature”, but also cover cases where the destruction of the environment endangers vital human needs.

13. Germany supports, as we have stated before, that Draft Principles 13 and 15 imply an intrinsic value of the natural environment in and of itself, recognizing that attacks against the environment are prohibited unless it has become a military objective, as are reprisals against the environment. We welcome that the commentary now references