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**STATEMENT**

Permanent Mission of the Republic of the Philippines to the United Nations

**Agenda Item - 77: Report of the International Law Commission  
on the work of its seventy-third session (Cluster I)**

77th Session of the United Nations General Assembly

25 October 2022

United Nations Headquarters New York

Mr. Chair,

The Philippines thanks the International Law Commission for its comprehensive report on the work of its seventy-third session under the leadership of the Chair, Mr. Dire Tladi, and commend all its members for their

decisions of national courts.

Non-state actors, including sub-state entities, civil society, and individuals have petitioned the court for redress of grievances, invoking international legal norms, including jus cogens, in at least three instances, before the Philippine Supreme Court. In response, the national court has issued decisions that, as noted under Conclusion 8, now form part of evidence of state practice. In this regard, the commentary in Conclusion 7 (Paragraph 3) could perhaps also note this dynamic.

The Philippine Supreme Court, for instance, has long anticipated the work from the Commission on *jus cogens*.

In the 2010 case of *Vinuya v. Romulo*, a petition to compel action by the Philippine government with regard to war time reparations on the basis of, among others, obligations arising from *jus cogens*, the Philippine Supreme Court pronounced that:

*Even the invocation of jus cogens norms and erga omnes obligations will not alter this analysis. Even if we sidestep the question of whether jus cogens norms existed in 1951, petitioners have not deigned to show that the crimes committed XXX violated jus cogens prohibitions at the time the Treaty XXX was signed, or that the duty to prosecute perpetrators of international crimes is an erga omnes obligation or has attained the status of jus cogens.*

XXX

*The term is closely connected with the international law concept of jus cogens. In international law, the term "jus cogens" (literally, "compelling law") refers to norms that command peremptory authority, superseding conflicting treaties and custom. Jus cogens norms are considered peremptory in the sense that they are mandatory, do not admit derogation, and can be modified only by general international norms of equivalent authority.*

The Supreme Court then traced the evolution of the jus cogens doctrine since the 1700s, cited the impact of the publication of the 1937 article, *Forbidden Treaties in International Law*, and noted that jus cogens gained even more recognition in the 1950s and 1960s as a result of the Vienna Convention on the Law of Treaties.

The Court, in rationalizing its decision, noted that although there was a consensus that certain international norms had attained the status of jus cogens, the ILC was unable to reach a consensus on the proper criteria for identifying peremptory norms.

After an extended debate over these and other theories of jus cogens, the ILC concluded ruefully in 1963 that "there is not as yet any generally accepted criterion by which to identify a general rule of international law as having the character of jus cogens." The Court then indicated that "the prudent course seems to be to leave the full content of this rule to be 14(n)-6(p86(e)-6(d)-6



