



United Kingdom Mission

5. potential to influence the way in which the international community of States as a whole regulates its conduct for years to come. And for that reason the work of the Commission also has the potential to divide States.
6. It is against that background that the United Kingdom while urging the Commission to proceed with great caution. Given the importance and difficulty of this topic, and the need to secure the consensus of States with this work, such caution is essential.
7. Turning to the draft conclusions, we do not consider **draft conclusion 2** to be helpful, for the following reasons.
8. First, it unrealistic to attempt accurately to capture within the confines of these draft conclusions the rationale which underpins *jus cogens*, as this draft conclusion attempts. This is a controversial and essentially theoretical matter, which we do not believe it is necessary for the Commission to address, even in the introductory manner as is now proposed. There is a wide spectrum of views across the international community; certainly that is true of the Commission and its Drafting Committee, not to mention this Sixth Committee, as this debate has revealed. While norms of *jus cogens* may well reflect and protect fundamental values of the international community, and possess a hierarchically superior status, we do not consider that this descriptive draft conclusion assists with providing

the clarity and technical assistance which would be of the most practical value to States and practitioners.

9. Secondly, a consensus, could be unhelpful. It is necessary to maintain a clear distinction between descriptive elements on the one hand, and the criteria for identification and the consequences of identification, on the other. Conflating the two could be taken as States intending to alter the meaning and effect of the definition set forth in Article 53 of the Vienna Convention on the Law of the Treaties.

10. This point is illustrated by the subjectiveness of the term *jus cogens*. Special Rapporteur contends at paragraph 22 of his Second Report that whether *jus cogens* fundamental values, or w

Or it may introduce an additional constitutive element of *jus cogens* norms, making their formation and identification more difficult. Either eventuality could undermine the place of *jus cogens* in the international legal order or leave it open to abuse.

12. Thirdly, the inclusion of a descriptive paragraph such as draft conclusion 2 risks taking this practical project into the territory of pure policy, at the risk of securing consensus among States on matters of practical concern. The Special Rapporteur has discussed *jus cogens* in his reports. An exposition of such descriptive and characteristic elements might have its place in the commentary to the draft conclusions, as aspects of the *jus cogens* concept. However, the Commission does not see no practical value and indeed dangers in such descriptive and characteristic elements featuring the draft conclusions themselves.

13. In relation to **draft conclusion 5**, we note that the terminology is taken from Article 53 of the Vienna Convention on the Law of Treaty. Analysing these terms with precision will be a formidable task. In that connection, we welcome the Commission's long-term programme of work on **general principles of law**. This inclusion is a further reason for the Commission to proceed cautiously on the *jus cogens*

the two topics and there may be a need to ensure consistency.

14. **Draft conclusions 6 and 7** concerning the process for acceptance and recognition of *jus cogens* leave a number of matters outstanding. The acceptance and recognition criterion or criteria apparently feature no requirement for State practice to play a role in the identification of *jus cogens*. Thus, while customary international law must be evidenced by State practice as well as *opinio juris*, there is no corresponding requirement for the ascertainment of hierarchically superior *jus cogens norms*, according to the approach of these draft conclusions. At the very least, it is counterintuitive that the higher legal order of *jus cogens* is formed on the basis of a lower bar.
15. In a similar vein, we are concerned that the acceptance and

16. While the Special Rapporteur speaks in his reports of Article 53, the United Kingdom has always considered that the substance of this work should not depart from the definition in that article at all. The topic should start and finish within the confines of Article 53, and be consistent with the rule it contains. Article 53 may mark a point of departure for further consideration of the consequences of *jus cogens* beyond the law of treaties, but in our view Article 53 and the other provisions of the Vienna Convention on *jus cogens*, should mark the point of return, as it were.

17. Mr Chairman, turning now to the **succession of States in relation to State responsibility**, the United Kingdom is grateful to the Special Rapporteur, Mr Pavel Tomaš, for his work on this topic which is at a very early stage. The Drafting Committee has provisionally adopted two draft articles concerning the scope of the topic and the definition of terms. The United Kingdom will reserve detailed comments until the work is further developed, but instead will offer some general observations at this stage.

18. As a preliminary observation, we note that there is very little by way of State practice in this area to guide the Commission. The State practice identified by the Special Rapporteur in his report is highly context-specific and sensitive. It must be viewed in its historical, political and

cultural context. Rather than revealing any

forward to her first report in 2018. Given the Commission has not produced further work on this topic since last year, we recall the main points from our statement last year.

22. First, the Commission should not seek to modify the law of armed conflict.
23. Secondly, while the preparation of non-binding guidelines or principles could be useful, we are unconvinced that there is a need for new treaty provisions in this area.
24. Thirdly, international humanitarian law is the