

General International Law

The Holy See was an early supporter of the development of the concept of *ius cogens*. In 1968, at the *United Nations Conference on the Law of Treaties*, our delegation supported the adoption of this concept since it could serve to transpose into positive law some of the universal dictates arising from Natural Law. At the same time, our delegation noted the urgent need to develop some rules of interpretation, to assist States in delineating the specific content of the peremptory norms of International Law, even without enumerating them one by one.²

Consequently, my delegation cannot but support the Commission's recent efforts to develop some guidance on the proper methodology for the identification of the peremptory norms of general international law and for determining their legal consequences. We note, at the same time, that the Commission's conclusions are, in essence, secondary norms of international law and that they do not provide any guidance on the specific content of the *ius cogens* norms.³

As noted by the Commission, the concept of *ius cogens* presupposes and reflects an international community founded on common values; that is, an international public order based, not on raw power, but rather on moral values shared by all in light of our common human nature. Unfortunately, transposing such high aspirations into positive law, while relying on the positivist methodology that characterizes the modern science of public international law, presents an intrinsic contradiction. How is it possible to harmonize Conclusion 2, which defines the nature of the norms of *ius cogens* by referring to fundamental values, with Conclusions 7 and 8, which require an empirical examination of actual State practice to identify the specific content of the

¹ *Statute of the International Law Commission*, article 1.

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