Advisory Committee on Public International Law

Particular legal consequences of a peremptory norm of general international law
Advisory report no. 51, 3 October 2025

This is a translation of the conclusion of the advisory report. The translation of the full advisory report will be published early 2026.

Conclusion and advice

In this advisory report, the CAVV has considered whether a development of the law under Article 41, paragraph 3 of the ARSIWA would be legally expedient (desirable), particularly whether further particular legal consequences can be attached to the commission by a state of a serious breach of a peremptory norm of general international law. In this connection the CAVV focused mainly on addressing the lifting of immunity from execution of the property of the state concerned.

The CAVV has arrived at the following conclusions and recommendations:

1. Under Article 41, paragraphs 1 and 2 of the ARSIWA, states have three obligations when responding to serious breaches of peremptory norms of general international law, including a breach of the prohibition of aggression, namely: (1) the obligation to cooperate in order to bring the breach to an end, (2) the obligation not to recognise as lawful the situation created by the breach, and (3) the obligation not to render aid or assistance in maintaining that situation. In Article 41, paragraph 3 of the ARSIWA, the ILC explicitly left open the possibility that the law could develop with regard to further particular legal consequences.

2. In its draft conclusions adopted in 2022 on identification and legal consequences of peremptory norms of general international law, the ILC did not provide further clarification about development of the law under Article 41, paragraph 3 of the ARSIWA. It did not give any further consideration to the subject of particular legal consequences regarding state immunity that may have developed since 2001.

3. Under current international law, the lifting of state immunity does not constitute a particular legal consequence of a serious breach of a peremptory norm of general international law. Such a legal consequence will only occur if a rule of international law develops on this matter.

4. The CAVV recognises that reasons may conceivably exist for attaching new particular legal consequences, such as the lifting of immunity, to serious breaches of a limited category of peremptory norms of general international law, for example for the sake of the realisation and the

effectiveness of international law. Nonetheless, the CAVV considers that a development of the law that amounts to the lifting of state immunity from execution in the event of breaches of peremptory norms of general international law would not be desirable or plausible for several reasons:

(a) Immunity and sovereignty are fundamental principles of public international law that cannot simply, without proper cause, be called into question.

(b) Widespread, representative and consistent state practice legally accepted by states is required for the law to develop.

(c) Such a development of the law could enable other states to disregard the rules of state immunity and confiscate Dutch state property and official financial assets on the basis of alleged serious breaches of peremptory norms of general international law by the Netherlands.

(d) The lifting of state immunity constitutes an additional form of self-help by states, which puts further pressure on the multilateral nature of the international legal order.

(e) In the case of some peremptory norms of general international law, neither their scope nor their content have been established. Hence, it is not entirely clear what conduct on the part of responsible states would fall within the scope of a possible particular legal consequence of lifting immunity.

(f) If the new norm materialises, the Netherlands will also have to take steps to lift the immunity of state property belonging to 'friendly' states involved in serious breaches of peremptory norms of general international law. Such a norm could therefore present serious complications for Dutch foreign policy.

5. The Netherlands, together with like-minded states, could work towards concluding a treaty that has regional scope, for example within the Council of Europe, or to the formation of a customary law norm that provides for further particular legal consequences, such as the lifting of immunity in the event of breaches of peremptory norms of general international law. However, norms included in such a treaty or formed through customary law could not be invoked against third states that have not ratified the treaty or do not support the customary law norm.

6. In its advisory report no. 48, the CAVV already observed that confiscation of foreign state property could possibly be justified as a countermeasure in the general interest. In this regard, confiscation of financial assets can, in principle, be seen as a reversible measure. Confiscation, or the use of such assets as collateral for a loan, could generate financial resources for a fund that pays compensation to Ukraine and its citizens.

7. In its advisory report no. 48, the CAVV noted that invoking the right to take countermeasures in order to justify confiscation may be open to legal challenge because, in the event of confiscation, Russia would not be induced to comply with its international legal obligation to make reparation. That obligation would be implemented through confiscation without Russia's cooperation. This would entail pursuing an object not envisaged for countermeasures by the ILC in the ARSIWA.