



76th Session of the General Assembly
Sixth Committee

Agenda item 2: Report of the International Law Commission on the work of its seventy-second session

Cluster III (Chapters VII (Succession of States in respect of State responsibility) and (General principles of law))

Statement by

Ambassador Helmut Tichy

Legal Adviser of the Ministry of European and International Affairs

New York, 2 November 2011

Chairperson,

Allow me to address the topic

As already mentioned in our 2019 statement, we would have no problem with such wording when understood as permitting states to ask for reparation which the injuring states may grant *ex gratia*, or not. However, we are concerned that such wording is likely to be understood as a rule of automatic succession into the responsibility of the predecessor state by a successor state. In our view, such a rule does not have a legal basis in international law and should not form part of *lex ferenda* either.

Where draft articles 16 to 19 restate the general rule that state which continues to exist after state succession will remain responsible for its unlawful acts and thus have to afford reparation, Austria does not see any problems. However, we wonder to what extent it is necessary to restate this general rule of state responsibility that is already covered by the Articles on the Responsibility of States for Internationally Wrongful Acts. In this regard, we concur with the views expressed by some members of the Commission as stated in paragraph 142 of the Commission's report.

Let me reiterate that Austria considers matters concerning succession relating to state responsibility, or more specifically the legal consequences stemming from internationally wrongful acts, to be fundamentally different from issues concerning accession to treaties, assets and debts. In the latter field, customary international law differentiates between types of treaties, assets and debts and provides for different succession rules. We do not think that any rule asserting an automatic transfer of rights and obligations to successor states where the predecessor state does not continue to exist can be identified *as lata*, nor would we consider it a good candidate for progressive development.

instead of "community of nations" since the term "nation" has different meanings. As we can read in the prestigious Max Planck Encyclopedia of International Law, "the notion of nation is decidedly unclear, disputed, and politically sensitive."

Usage of the terminology "international community" would have the further advantage of including other subjects of international law, such as international organisations, that may also develop legal systems similar to national legal systems that apply internally and sometimes even to the member states and their citizens. Austria also shares and supports the position not to exclude the legal practice of international organisations as acknowledged in commentary 5 to draft conclusion 2. Hence,

