



78th Session of the General Assembly
Sixth Committee

Agendaitem 79:

third and seventyfourth session

Cluster I-Chps I, II, III, IV (General principles of law), VIII (Sea level rise in relation to international law) and X (Other Decisions and Conclusions)

Statement by

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New York, 23 October 2023

As the International Court of Justice has confirmed, the principles listed in this resolution belong to customary international law. Austria would be interested to be provided with other examples that might demonstrate the independent normative character of general principles of law formed within the international legal system.

The wording of draft conclusion 2 on recognition leaves it open as to what exactly general principles of law must be recognized. We therefore propose to add that they must be recognized as such by the international community. Austria wonders, if such a recognition can take place instantly or would have to evolve over a certain time. Furthermore, ~~it~~

Draft conclusion on the determination of transposition to the international legal system raises many questions. In particular, the meaning of the phrase

of law and could be regarded as general principles of law. Other examples, however, appear to be dependent on either the context or the applicable procedural rules. In any case, we do not accept trial in absentia as a general principle of law as it is in conflict with the *ordre public* of a number of states

Draft conclusion 11 on the relationship between general principles of law and treaties and customary international law denies the existence of a hierarchy between the general principles of law and the other sources of international law. However, draft conclusion 10 paragraph 1 creates a different picture as it states that general principles of law are *only* resorted to when other rules of international law do not resolve a particular issue.

This concept seems to exclude the existence of a general principle not in conformity with treaties and customary international law, so that, at least to that extent, some sort of hierarchy seems to exist. On the other hand,

This year's report deals with a number of fundamental questions of international law relating to legal stability, in particular the question of the immutability of boundaries, fundamental change of circumstances, historical titles and rights, equity and permanent sovereignty over natural resources, to name only some of them. We welcome that the Study Group will continue its work next year, focusing on the subtopics of statehood and the protection of persons affected by sea level rise. Progress on the topic of sea level rise is very much needed and urgent in view of the increasing effects of the man-made climate crisis.

The effects of climate change on borders are not just an issue for coastal and island states, but also for landlocked countries. For instance, Austria witnesses

Austria agrees with the view expressed in the report that historic considerations do not create legal rights per se, but have primarily evidentiary value, as stated in by the International Court of Justice in the case concerning the Territorial and Maritime Dispute between Nicaragua and Colombia.

Austria shares the view that any future outcome of the discussion on sea level rise should not lead to a change of UNCLOS. We are open to achieving legal stability, certainty and predictability through an interpretation of the Convention.

Chairperson,

With respect to chapter III of the report on Specific issues on which comments would be of particular interest to the Commission, Austria has already submitted written observations on the topic of piracy and armed robbery at sea in May of this year.

Austria also intends to submit written comments on the Draft articles on immunity of State officials from foreign criminal jurisdiction by 1 December of this year, in particular on draft article 7 on crimes under international law in respect of which immunity ratione materiae shall not apply. While we support article 7 as a central provision of the draft articles and as a contribution to the fight against impunity, we reiterate the need for a list of exceptions to functional immunity in draft article 7 is incomplete and should also contain a reference to the crime of aggression.

According to Austrian practice and opinio iuris no functional immunity exists for international crimes, including the crime of aggression. We therefore call on the Commission and the newly appointed Special Rapporteur Claudio Grossman Guiloff, whom we thank for taking over this very important topic, to revisit this matter and amend draft article 7 accordingly.

In this context, we would like to express our support for the balanced approach of the draft articles containing important procedural safeguards, which should make the whole project acceptable to the international community. We encourage the Special Rapporteur to pursue work on the finalisation of the draft articles in this spirit.

Finally, concerning chapter X of the report, Austria welcomes the decision of the Commission to address the issue of ~~legally~~ binding international instruments.

agreements	-legally binding international
international instruments	non-legally binding

exclusively for legally binding documents. A similar decision to change the title

Advisers on Public International Law (CAHDI) of the Council of Europe.

Regarding the future work of the Commission and its long-term program of work, we reiterate our view, recently expressed in a joint statement of the Slavkov group, that is the Czech Republic, Slovakia and Austria, in the Sixth Committee that the Commission should speedily embark on the topic of universal jurisdiction