



## 78<sup>th</sup> Session of the General Assembly

item 79: Report of the International Law Commission on the work of its seventythird and seventyfourth session

Cluster II - Chps VII (Subsidiary means for the determination of rules of international law) and IX (Succession of States in respect of State responsibility)

Statement byMr. Maximilian Gorke

Legal Adiser

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31 October 2023

Chairperson,

With regard to the topic Subsidiary means for the determination of rules of international law Austria congratulates § 5.32 841.9 international law

tribunals" achieves this goal in a satisfactory manner. In our view, a decisive criterion should be whether any third party dispute settlement institution is empowered to decide disputes, interpret the law authoritatively or render advisory opinions. However, even other bodies not qualifying as courts or tribunals might be empowered to do so, and should thus be included which could best be achieved by referring to "jurisprudence of courts and tribunals and other bodies".

In this context we should consider the reference in paragraph 6 of the comment to draft conclusion 2 to the views of the UN Human Rights Committee. As is generally known, the UN Human Rights Committee is not a court or tribunal empowered to decide cases, but can only issue legally non-binding views.

Austria agrees in substance with paragraph 4 of the comment to draft conclusion 2, i.e. that the representativeness of teachings is an important aspect. We wonder though why paragraph 14 refers to draft conclusion 5. It seems that the question of representativeness is addressed much more prominently in the current draft conclusion 3.

Let return to the suggested draft conclusion 3 on general criteria for the assessment of subsidiary means for the determination of rules of international law containing a list of criteria relevant for the assessment of the value of subsidiary means for the determination of rules of international law. While Austria generally agrees with the criteria mentioned therein

Allow me to turn now to the topic of Succession of States in respect of State responsibility . Before addressing the substance of this topic, Austria wishes to express its appreciation to the former Special Rapporteur, Professor Pavel Šturma, for his dedication and hard work on this topic, which was clearly one where it was very difficult to reach consensus.

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