

 Permanent Mission
of Austria to the
United Nations in New York

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Sixth Committee

**Agenda item 79: Report of the International Law Commission on the work of
its seventy-third and seventy-fourth session**

**Cluster II - Chps: V (Settlement of disputes to which international organizations are
parties) and VI (Prevention and repression of piracy and armed robbery at sea)**

Statement by
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Chairperson,

Allow me to turn to chapter V, dealing with the topic **“Settlement of disputes to which international organizations are parties”** and to congratulate Special Rapporteur August Reinisch for his first report.

Austria welcomes that the Commission has started working on this topic, which it considers to be of great practical value. This is particularly true for host states of international organizations, but equally for member states in international organizations. As a host country Austria has witnessed a number of cases where disputes of a private law character were brought before its domestic courts, raising complex issues of jurisdictional immunity and access to justice, both at a national constitutional as well as at an international human rights law level. Particularly these disputes with private parties are of practical importance. We therefore welcome the Commission’s decision to clarify that any disputes to which international organizations are parties are covered by the topic - as has been made evident by changing the title of the topic, now generally referring to “disputes” and not only to “international disputes”.

As a host country, Austria is often faced with potentially conflicting obligations: On the one hand, it has to respect the broad jurisdictional immunity of international organizations under general immunity agreements and headquarters agreements. On the other hand, it is under an obligation pursuant to Article 6 of the European Convention on Human Rights to grant access to its courts in cases where civil rights are claimed by individual litigants. The European Court of Human Rights has clarified in its 1999 *Waite and Kennedy* judgment that this obligation in principle also extends to contractual and other private law claims of individuals against international organizations.

Therefore, Austria has constantly worked with international organizations headquartered in Austria to provide effective alternative forms of dispute settlement, including access to international bodies or independent internal mechanisms.

The collision of norms between the obligations of Austria as host country granting immunity from jurisdiction to international organizations and access to courts for individuals in case of human rights violations was a recent issue before the Austrian Constitutional Court regarding the headquarters agreement between OPEC and Austria.

Chairperson,

Austria welcomes the Commission's plan to produce a set of draft guidelines based on actual practice that will provide guidance for settling disputes to which international organizations are parties.

Austria appreciates the conceptual clarity brought into the core elements defining the scope of this topic in **guideline 1 "scope"** and **guideline 2 "use of terms"**. Austria is glad to see that the definition of international organizations in **guideline 2 subparagraph (a)**, building on the one contained in the draft articles on the responsibility of international organizations adopted by the Commission in 2011, has been refined. Austria particularly welcomes that the possession of at least one organ capable of expressing a will distinct from that of its members has been included in this definition. Austria regards this a crucially important element, distinguishing international organizations from mere cooperation based on a treaty.

Austria also concurs with the idea that international organizations are created on the basis of a treaty or other instrument governed by international law. Austria would like to add that an “instrument governed by international law” need not necessarily be a legally binding instrument. This implies that, under certain circumstances, permanent arrangements between states such as the Organisation for Security and Cooperation in Europe (OSCE) may also be regarded as international organizations.

Concerning the proposed definition of dispute in **guideline 2 subparagraph (b)**, Austria concurs with the approach to build on the *Mavrommatis* definition, and to ensure that this definition would also be applicable to disputes of a private law character.

Austria also wants to point out that the fact that disputes at the international level may have political aspects does not change their character as legal disputes.

Furthermore, Austria is eager to learn from the Commission about the potential role of the International Court of Justice in regard to the settlement of disputes between international organizations and states through advisory opinions or, possibly in the future, through extending its contentious jurisdiction.

Chairperson,

Austria welcomes the inclusion of the topic “**Prevention and repression of piracy and armed robbery at sea**” in the ILC's work program, given the continuing threat to international shipping, which negatively affects global trade. While UNCLOS establishes the general legal framework for this topic, there are still some gaps, since, for instance, the crime of piracy does not apply in the area of the territorial sea.

We thank the Secretariat for preparing a memorandum, which gives a good overview of the existing legal situation and the discussions that have taken place so far. We are also grateful to the Special Rapporteur Yacouba Cissé for his first report, which already contains proposals for draft articles.

Draft article 1 “scope” establishes the fundamental distinction between piracy and armed robbery. Such a distinction is necessary, since the basis of this definition of piracy is UNCLOS that deals with piracy only in the area of the high seas. We do not object to the distinction, although the Austrian legislation includes both crimes in one term, that of maritime robbery, which is geographically not restricted.

Concerning **draft article 2 on the “definition of piracy”**, the reference to the “private ends” as a necessary element of piracy is to be understood as precluding any governmental acts. However, Austria wonders why the definition is restricted to private ships and aircrafts, since piracy could also be committed by the crews of government ships in case of mutiny as provided for in article 102 UNCLOS.

In addition, we suggest that the Commission also considers the extension of the definition of piracy to acts for private ends committed by government officials on government ships and aircraft.

The renunciation of the reference to land as the starting point of piracy, as paragraph 13 of the commentary to draft article 2 explains, is probably justified, if only in view of the fact that the territorial sea is already excluded there.

In our opinion the wording of draft article 2 paragraph 1 subparagraph (a) (ii) mentioning “a place outside the jurisdiction of any state” where the rules on piracy do not apply, and draft article 2 paragraph 2 referring to article 58 paragraph 2 UNCLOS require further clarification.

These provisions raise some doubt whether the rules on piracy also apply to exclusive economic zones and should therefore be redrafted. In particular, paragraph 2 raises the question of the extent to which the reference to UNCLOS also obliges non-parties to comply with article 58 paragraph 2 UNCLOS.

As to **draft article 3 “definition of armed robbery at sea”**, we are wondering whether the reference to acts of violence comprises all the acts, committed unlawfully and intentionally, which are listed in article 3 of the Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation (SUA Convention), or only the acts of violence explicitly referred to in paragraph 1 subparagraph (b) of article 3 of the SUA Convention. It might be useful to think about including also the other crimes listed in article 3 of the SUA Convention in the definition of the robbery at sea, such as, for instance, seizing or exercising control over a ship by force or destroying a ship or causing damage to a ship or to its cargo, which is likely to endanger the safe navigation of that ship. The present wording of draft article 3 creates an uncertainty regarding the precise definition of robbery at sea insofar, as it could be argued that, in view of a systematic interpretation, all the acts listed in the SUA Convention in addition to acts of violence are excluded from the definition in draft article 3.

Let me conclude by thanking the Commission for the progress achieved. Thank you.