

Check against delivery

71st Session
of the General Assembly
Sixth Committee

New York, 25 October 2016

Mr. Chairman,

My delegation thanks Special Rapporteur Eduardo Valencia-Ospina for his eighth report on the topic " **protection of persons in times of natural disasters**" and congratulates the Commission for the adoption of the 1st draft articles on second reading, together with the commentaries. ***The high frequency of disasters, either natural or man-made, which cause the loss of many lives, like the recent earthquake in our neighbour country Italy, proves the necessity of addressing international disaster cooperation in ILC draft articles. The magnitude of such disasters regularly exceeds the capability of individual states to cope, and international assistance is required. Consequently, the draft articles fill a gap in an important area.***

draft article 1- paragraph 2 raises the question whether the draft articles only give way to those rules which specifically address disaster relief, or to

"decisions of domestic courts" are not yet reflected in the draft conclusions provisionally adopted.

As regards the new draft conclusion 13 on "pronouncements of expert treaty bodies", Austria shares the view expressed in the Commission's report that "any possible legal effect of a pronouncement by an expert treaty body depends, first and foremost, on the specific rules of the applicable treaty itself." We thus concur with the proposed wording of draft conclusion 13 paragraph 2. However, we would suggest reflecting the report's consideration by inserting the word "primarily" between the words "is" and "subject", so that it would read "relevance of a pronouncement of an expert treaty body for the interpretation of a treaty is primarily subject to the applicable rules of the treaty."

The Austrian delegation is also in agreement with the Commission's core finding that a "pronouncement of an expert treaty body cannot as such constitute subsequent practice under article 31, paragraph 3 (b) of the Vienna Convention on the Law of Treaties, since this provision requires a subsequent practice of the parties that establishes their agreement regarding the interpretation of the treaty." It suggests that this important proviso be also reflected in the wording of draft conclusion 13 paragraph 3 which "currently merely reflects the consideration that a pronouncement of an expert treaty body "may give rise to, or refer to," a subsequent agreement or subsequent practice by parties.

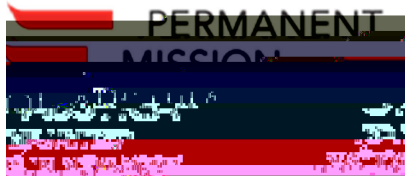
We also note that the Commission did not provisionally adopt a draft conclusion on "decisions of domestic courts" as suggested by the Special Rapporteur in his report. Austria considers that in their final version the conclusions should also address "decisions of domestic courts". As rightly pointed out by the Special Rapporteur, domestic court decisions may actually constitute state conduct in the application of a treaty and thus "relevant state practice" for the interpretation of a treaty.

Going back to the report of the Special Rapporteur, Austria has noted the different structure of draft conclusions 12 and 13 as proposed in his report: Draft conclusion 12 of that report, dealing with "pronouncements of expert bodies", addressed only the outcome of the work of such expert bodies as subsequent practice. Draft conclusion 13 of that report on "decisions of domestic courts" did the same in paragraph 1 for the role of decisions of domestic courts, but, in paragraph 2, with its five sub-paragraphs, dealt also with a different issue, namely how subsequent agreements and subsequent practice should be taken into account by domestic courts. If the Commission decides, as we suggest, to include a draft conclusion on decisions of domestic courts, the substance of draft conclusion 13 paragraph 2 of the Special Rapporteur's report should either be included in a separate provision or omitted.

Mr. Chairman,

Concerning the "t. r d c s o n s a n d c o n c l u s i o n s o f t. C o m m i s s i o n", the Austrian delegation has taken note of the two topics for further

Commission but think that any possible future work on this subject should not be limited to disputes and relationships governed by international law. As our discussions, also those in the meetings of the legal advisers on public international law of the Council of Europe (CAHDI), have shown, it is not possible to limit the scope of work to disputes governed by international law.



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