

72<sup>nd</sup> Session

of the General Assembly

Sixth Committee

Agenda Item 81

Report of the International Law Commission

on the Work of its 6 9<sup>th</sup> Session

Cluster 1: Chapters I -V & XI (Crimes against humanity; Provisional application of treaties ; Other decisions and conclusions of the Commission )

Statement by

Ambassador Helmut Tichy

New York, 23 October 2017

In the interest of time I will deliver a shortened statement orally today, while recalling that the full version will be on record on the Papersmart Platform and will be submitted through the Secretariat for consideration by the ILC.

Mr. Chairman,

With regard to the topic Crimes against humanity µ Austria commends the Special Rapporteur, Mr. Sean M(r.)-1(Sean)-(M)-n M

As explained in the ILC Commentary to draft article 13(6), other conditions an extradition could be made dependent upon are the exclusion of the death penalty or the respect for the rule of speciality

interpretation of principles of law as principles of international law. This view resulted from the Soviet ideology of international law which rejected any deduction of rules of international law from rules of national law, since, according to this view, the law of states with different social structures could not coincide and thus could not develop common legal principles. We do not believe that future work of the Commission on general principles of law should be based on this outdated view which most countries, including my own, do not share.

Tunkin belonged to those who deducted from the introductory sentence of Article 38fdhe ICJ Statute a meaning of principles of law that corresponds to principles of international law. One has to point out, however, that the insertion of the particular reference that ICJ decisions were WR EH WDNHQ ´LQ DFFRUGDQFntb tlzeLcMakeau QfWalthdue CBB off/ the RCDO ODZ µ Statute was only designed to explain that the sources of law to be applied by the Court are sources of international law.

The uncertainties inherent in the notion of general principles of law have impeded the ICJot resort to these principles explicitly, which makes a clarification by the Commission most welcome. In this respect, it would first be necessary to define general principles of law, including the notion of principles as such, and to distinguish them fromother concepts, such as rules or norms. Moreover, the Commission would have to address the origin of general principles of law, the method of their identification, their nature, their functions and their limits.

In sum, my delegation is convinced that this work of the Commission on general principles of law will substantially contribute to the clarification of a vague, but important source of international law.

We note that the & R P P L V VrlepRoct also contains a proposal for a further new topic Evidence before international courts and tribunals  $\mu$  D Q G D S D S H U H [SODLQLQJ W scope of this topic. Permit me to say that Austria is rather reluctant to support specific work of the Commission on this topic, as we believe that it is for the international courts and tribunals themselves to assess the value of evidence and that for this purpose no general rules elaborated by the Commission CCom121earace