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The Permanent Mission of Austria to the United Nations presents its compliments to the Secretary-General of the United Nations, and in reference to the request by the International Law Commission for comments and observations by governments on specific issues on which comments would be of particular interest to the Commission (Chapter III of the Commission's report on its 67th session), has the honour to convey comments by Austria in the attached documents as well as the statements delivered by Austria during the debate in the Sixth Committee.

The Permanent Mission of Austria to the United Nations avails itself of this opportunity to renew to the Secretary General of the United Nations the assurances of its highest consideration.

New York, 11 February 2016



To the
Office of Legal Affairs – Codification Division
2 United Nations Plaza (DC2-0570)
New York

6thcommittee@un.org

Enclosures

ad E. ius cogens

On the topic of "ius cogens" Austria would like to provide the following information:

The Austrian Constitutional Court dealt with the issue of *ius cogens* in a decision in 1998 when it was confronted with the claim on reimbursement of costs of the Federal Government against the Federal State and City of Vienna on the basis of an agreement concluded under Article 15 lit. a of the Austrian Constitution, which have to be interpreted according to the rules of international law as reflected in the Vienna Convention on the Law of Treaties (VCLT). The Constitutional Court addressed the question whether the principle of *laesio enormis*, rooted in the Austrian legal system, was also part of public international law. The Court came to the conclusion that *laesio enormis* was not a legal norm of *ius cogens* character according to Article 53 VCLT, however, without addressing any criteria for its formation and the consequences flowing therefrom. Neither did the Court enter into an analysis whether *laesio enormis* could be characterized as a general principle of law recognized by civilized nations.