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THE PRINCIPLE OF ACQUIESCENCE IN INTERNATIONAL LAW

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1. Definition of acquiescence

Acquiescence is a general principle of law (as defined by Article 38(1)(c) Statute of the International Court of Justice (ICJ)) and a legal fact. Although not as clear-cut in Anglo-Saxon legal theory than in continental legal theory, the difference between legal fact and act is significant because it avoids making acquiescence depending on a manifestation of the will. Why is acquiescence deemed a general principle? A negative assessment of the sources of international law shows that acquiescence cannot be categorised as customary international law (CIL), neither as a unilateral act. For acquiescence to be part of CIL, it would be first necessary to pinpoint a period of creation and the matching *opinio juris*. Second, the scrutiny of public international law shows that only specific concretisations of acquiescence are part of CIL (for instance acquiescence in the cloak of legitimate expectations in the field of investment law): the very idea and abstract concept of acquiescence is absent from CIL. It is no more a unilateral act because the expression of a will is not a requirement of acquiescence: to the opposite states may well be bound by acquiescence against their

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