

72nd Session of the General Assembly/ Sixth Committee

**Item 81: Report of the International Law Commission on the work of its sixty ninth Session
(Cluster I)
New York, October 25th 2017**

Statement by Algeria

Mr Chairman,

At the outset, my delegation would like to thank Mr. Georg Nolte, Chairman of the International Law Commission for his comprehensive report on the work of the 69th Session of the Commission. We would like to congratulate the Commission for a successful and fruitful Session.

We seize this opportunity to reiterate our support to the Commission for its outstanding contribution to the progressive development and codification of international law.

Mr Chairman,

I appreciate the opportunity to comment on the topics that are currently before the Committee, namely in regards to Crimes against humanity and provisional application of treaties.

On the topic of Crimes against humanity, my delegation took note of the work of the Special Rapporteur Mr Sean D. Murphy on his third report, and of the adoption by the Commission of a set of draft articles after first reading. These articles include in particular the issues of extradition, non-refoulement, mutual legal assistance, victims, witnesses and other affected persons, relationship to competent international criminal tribunals, federal State obligations, monitoring mechanisms and dispute settlement.

Although we recognize that crimes against humanity constitute one of the most serious violations of international law, we consider that this topic should be carefully addressed bearing in mind the existence of legal framework dealing with various multilateral treaties relating to crimes against humanity.

As far as the draft articles are concerned, we would like to make the following remarks:

We note the absence of a provision on immunity, draft article 6 paragraph 5 imports the equivalent of Art 27 paragraph 1 from the Rome Statute pertaining to the irrelevance of a person's official position for purposes of substantive criminal responsibility in the context of allegations of the commission of crimes against humanity.

In this regard, it must be clearly stated that the inclusion of this paragraph is "without prejudice" to the Commission's topic on immunity of state officials from foreign criminal jurisdiction.

We note that draft article 12 on victims, witnesses and others, does not provide any definition of 'victims'. Therefore, some clarification needs to be provided in this regard.

Paragraph 3 of article 12 is unclear on what the duty on the state to provide reparations and other remedies for victims entails.

An additional point that we wish to make is with regard to the absence of a reference in the Draft articles to amnesties. Amnesty had been used by many States and proved to be an important tool to achieving peace. The Commission should be considering this important aspect by examining the numerous examples of amnesty laws.

Turning to the topic of 'Provisional application of treaties', my delegation appreciates the progress made on this important and practical issue. We would like to thank the Special Rapporteur for his extensive work on the subject and to congratulate the Commission for having provisionally adopted a consolidated set of guidelines on the provisional application of treaties with commentaries thereto.

These draft guidelines will certainly provide States and international organizations with useful guidance and clarification regarding the law and practice on the provisional application of treaties on the basis of article 25 of both the 1969 Vienna Convention and the 1986 Vienna Convention on the law of treaties.

We share the views expressed by the Commission that this basic approach does not necessarily reflect all aspects of contemporary practice on this matter by including a reference to both the law and practice.

In this context, while it is stated in the report that the draft guidelines are also based on the practice of States, it would have been useful for the Commission to look more closely at the practice of states through the memorandum prepared by the secretariat reviewing State practice in respect of treaties deposited or registered with the Secretary General that provide for provisional application.

As regards to the draft guidelines, we think that draft guideline 4 needs to clarify the point at which an international organization resolution should be considered an agreement on provisional application.

As for the long term program of work, my delegation took note of the decision by the Commission to include in its long-term program of work two new topics, namely, general principles of law and evidence before international courts and tribunals.

We invite the commission to explore other topics to better address the concerns of the international community. In this regard, we suggest adding the topic of the right to self-determination.

Finally, we look forward to the commemoration of the Commission's seventieth anniversary to be held during its seventieth session in New York and in Geneva. It will certainly provide a renewed opportunity for a constructive exchange of views between the Sixth Committee and the Commission.