

**72nd Session of the Sixth Committee of the General Assembly of
the United Nations**

**Report of the International Law Commission on the work of its
69th Session**

Cluster 1 (Chapters I, II, III, IV, V and XI)

Statement by

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New York, 23-27 October 2017

Mr Chairperson,
Dear colleagues,
Ladies and gentlemen,

First and foremost, I would like to congratulate the International Law Commission for its comprehensive, interesting and well-drafted Report prepared during its 69th Session. I would in particular thank the Commission's Chairperson, Mr Georg Nolte, for having presented the main trends of this Report earlier this week. I would also like to express my gratitude to Mr Nolte for his participation in the 54th meeting of the Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI) held on 21-22 September in Strasbourg (France).

I would also warmly thank the Bureau of the General Assembly's Sixth Committee, as well as its Secretariat, for all the work and effort they have put together to make this 72nd session a fruitful one.

Please allow me to make a few remarks in relation to **Chapter III** (Specific issues on which comments would be of particular interest to the Commission), **Chapter IV**

(crimes against humanity) and **Chapter V** (provisional application of treaties) of this year's report.

1. Chapter III (Specific issues on which comments would be of particular interest to the Commission: Succession of States in respect of State Responsibility)

On the specific issues on which comments would be of particular interest to the ILC, I would like to mention the theme of "Succession of States in respect of State Responsibility". In this respect, I would like to congratulate Mr Pavel Šturma for his recent appointment as Special Rapporteur on this topic and further express our gratitude to Mr Šturma for his participation in the Seminar "State Immunity under International Law and Current Challenges" organised in the framework of the Czech Chairmanship of the Committee of Ministers of the Council of Europe and on the occasion of the 54th meeting of the Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI) on 20 September 2017 in Strasbourg (France).

We have examined the Special Rapporteur's "First report on Succession of States in respect of State Responsibility" with great interest. In the Report, the Special Rapporteur introduces a preliminary survey of State practice concerning cases of succession in Central and Eastern Europe in the 1990s (paras 47-64). In this regard, we would like to draw your attention to the *Pilot Project of the Council of Europe on State Practice regarding State Succession and Issues of Recognition* carried out under the aegis of the CAHDI. For the Pilot Project sixteen member States of the Council of Europe submitted national reports covering official documents and statements made by all three branches of State powers, i.e. the executive, the legislative and national courts and tribunals, in the period from 1989 to 1995. On the basis of the information gathered, the CAHDI entrusted to prepare a Report to several experts from the three following international institutes: the Max Planck Institute for Comparative Public Law and International Law (Germany), the T.M.C. Asser Institute (the Netherlands) and the Erik Castrén Institute of International Law and Human Rights (Finland) with the aim of analysing the practice of the contributing member States. We believe that this detailed study, available as a CAHDI and Council of Europe Book¹, could be of assistance for the work of the International Law Commission and the Special Rapporteur concerning this topic.

¹*State Practice Regarding State Succession and Issues of Recognition*, edited by Jan Klabbers, Martti Koskenniemi, Olivier Ribbelink and Andreas Zimmermann, © Council of Europe, The Hague 1999, ISBN-13 9789041112033.

2. Chapter IV (crimes against humanity)

With respect to the crimes against humanity, allow me, first of all, to thank the Special Rapporteur, Mr Sean D. Murphy, for his “Third report on crimes against humanity” which provides the current basis for the ILC’s examination of this topic. The Council of Europe welcomes the work of the ILC in this field and supports the initiative of addressing various actions to be taken by States under their national laws with respect to crimes against humanity.

We too have attached and continue to attach great importance to actions to be taken under national legislations to ensure the end of impunity for offences constituting crimes against humanity. Indeed, the Council of Europe was one of the first actors to address the prevention of impunity for crimes against humanity with its *European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes* (ETS No. 82) of 1974. This Convention aims at ensuring that the punishment and prosecution of crimes against humanity and the most serious violations of the laws and customs of war are not prevented by statutory limitations.

With regard to the Third Report of the Special Rapporteur, we would like to confine our comments to two issues: First, to the issue of “Victims, witnesses and other affected persons” handled under Chapter IV of the Report proposing Draft Article 14, and, secondly, to the issue of “Monitoring mechanisms and dispute settlement” dealt with under Chapter VII of the Third Report.

Concerning the first issue of “Victims, witnesses and other affected persons”, the Report refers in footnote 236 on page 165 to the Council of Europe Directorate General of Human Rights’ *Guidelines on the protection of victims of terrorist acts* adopted by the Committee of Ministers of the Council of Europe on 2 March 2005. We would like to inform you that these Guidelines have recently been revised in order to incorporate additional elements in light of the new face of terrorism. The *Revised Guidelines of the Committee of Ministers of the Council of Europe on the protection of victims of terrorist acts* was adopted on 19 May 2017². This revision aimed to incorporate the following four lines of action: implementing a general legal framework to assist victims, providing assistance to victims in legal proceedings, raising public awareness of the need for

² [Revised Guidelines of the Committee of Ministers on the protection of victims of terrorist acts](#), Document prepared by the Steering Committee for Human Rights (CDDH) adopted at the 127th Session of the Committee of Ministers of the Council of Europe on 19 May 2017 in Nicosia (Cyprus).

societal recognition of victims - including the role of the media -, and involving victims of terrorism in the fight against terrorism.³ The Guidelines aim at recalling the measures to be taken by the member States in order to support and protect the fundamental rights of any person who has suffered direct physical or psychological harm as a result of a terrorist act, and, in appropriate circumstances, of their close family. We would welcome if Draft Article 14 on "Victims, witnesses and others" would adopt an equally holistic approach in addressing the different needs of victims of crimes.

With regard to the second issue, "Monitoring mechanisms and dispute settlement", we would like to draw your attention to paragraph 222 of the Third Report of the Special Rapporteur on crimes against humanity referring to a Secretariat's 2016 Memorandum⁴ on information existing on treaty-based monitoring mechanisms which may be of relevance to the future work of the ILC concerning the topic of crimes against humanity. This Memorandum with regard to the treaty-based monitoring mechanisms within the system of the United Nations and beyond is a very comprehensive one. With regard to the Council of Europe this Memorandum makes reference to the European Court of Human Rights as an example of a regional monitoring mechanism in Europe. The European Court of Human Rights has in its case law dealt with the issue of extensive time lapses between the commission of such offences and their prosecution. In the case of *Kolk and Kislyiy*⁵ for example, the Court, in declaring the application inadmissible, noted that the acts of which the applicants had been accused in 2003 under the national Criminal Code had even been expressly recognised as crimes against humanity in the Charter of the Nuremberg Tribunal of 1945. This was especially true of crimes against humanity, the Court reasoned, in respect of which the Charter of the Nuremberg International Tribunal had laid down a rule that they could not be time-barred. In its case law on other international crimes (e.g. *Sawoniuk*⁶ in 2001, and *Kononov*⁷ in 2010) the Court said that those who committed war crimes during the Second World War did not have a human right for them to be statute barred, and noted a number of international Conventions that now prohibit statutory limitations for war crimes. As you can see, the Council of Europe has been very active in the field of crimes against humanity and other international crimes. We look forward to the ILC's further work on this issue.

³ Report of the Secretary General of the Council of Europe „The fight against violent extremism and radicalisation leading to terrorism" ([CM\(2016\)64](#)) presented at the 126th Session of the Committee of Ministers (Sofia, 18 May 2016).

⁴ Memorandum prepared by the Secretariat on Information on existing treaty-based monitoring mechanisms which may be of relevance to the Commission's future work on the topic "Crimes against humanity", [A/CN.4/698](#).

⁵ *Eur Court HR, Kolk and Kislyiy v. Estonia*, Fourth Section Decision of 17 January 2006, Application Nos. 23052/04 & 24018/04.

⁶ *Eur.Court HR, Sawoniuk v. United Kingdom*, Third Section Decision of 29 May 2001, Application No. 63716/00.

⁷ *Eur.Court HR, Kononov v. Latvia*, Grand Chamber Judgment of 17 May 2010, Application No. 36376/04.

3. Chapter V (provisional application of treaties)

We would like to thank the Special Rapporteur, Mr Juan Manuel Gómez-Robledo, for the preparation of four reports on the analysis of the relationship of provisional application of treaties to other provisions of the 1969 Vienna Convention and of the practice of international organisations with regard to provisional application.

We would like to welcome the Memorandum⁸, prepared by the Secretariat, reviewing State practice in respect of treaties (bilateral and multilateral), deposited or registered in the last 20 years with the Secretary-General of the United Nations, that provide for provisional application, including treaty actions related thereto. The ILC will consider the Memorandum at its next session in 2018.

In relation to this subject, the Council of Europe suggests including some examples of provisional application of specific treaty provisions from our long-standing Council of Europe practice in this field.

The Memorandum, at paragraphs 20 and 33, makes reference to the provisional applicability of certain provisions of *Protocol 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms* (CETS No. 194) by separate agreement, the so-called "Madrid Agreement", and *Protocol 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms* (CETS No. 204) including an express clause on provisional application.

Apart from these examples with regard to the *European Convention on Human Rights* we would like to draw your attention to other examples of provisional application included in conventions and protocols concluded within the framework of the Council of Europe: the provisional application of the *General Agreement on Privileges and Immunities of the Council of Europe* (ETS No. 2) (Article 22) and the *Convention on the Elaboration of a European Pharmacopoeia* (ETS No. 50) (Article 17).

Another unusual and peculiar example took place in 2016 in relation to the *Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism* (CETS No. 217) which has entered into force recently (1 July 2017). Article 7 of that Protocol, provides for the setting up of a network of 24-hour-a-day national contact points facilitating the rapid exchange of information concerning persons travelling abroad for the purpose of terrorism. With a view to applying this article provisionally, the

⁸ ILC, Provisional application of treaties, Memorandum by the Secretariat, [A/CN.4/707](#), 24 March 2017.

Committee of Ministers at its 126th Ministerial session on 18 May 2016 “called for the expeditious designation of the 24/7 contact points *to facilitate the timely exchange of information, as provided for by the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 217), pending its entry into force.*”

As a most recent example, when the *Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons*⁹ will be opened for signature on 22 November 2017 in Strasbourg (France) the signatories will have the possibility to declare under Article 5 of the Amending Protocol that they will apply the provisions of the Protocol on a provisional basis.

As you can see, the Council of Europe has a rich practice in the provisional application of treaties and therefore attaches great importance to the ILC’s work in this field.

⁹ [CM\(2017\)90](#).