



**74<sup>th</sup> Session of the Sixth Committee of the General Assembly of  
the United Nations**

**Report of the International Law Commission on the work of its  
71<sup>st</sup> Session**

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

Statement by

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Mr Chairperson,  
Dear colleagues,  
Ladies and gentlemen,

Since this is the first time that I am taking the floor, allow me to begin by congratulating you on your election as Chair of the Sixth Committee. I wish you and other members of the Bureau every success in your work.

I would also like to congratulate the International Law Commission (ILC) for its comprehensive, interesting and well-drafted Report prepared during its 71<sup>st</sup> Session. I would like in particular to thank the Chair of the ILC, Mr Pavel ŠTURMA, for having presented the main trends of this Report earlier this week. I would also like to express my gratitude to Mr Pavel ŠTURMA for his participation at the 58<sup>th</sup> meeting of the Council of Europe's *Committee of Legal Advisers on Public International Law* (CAHDI) held on 26-27 September in Strasbourg (France), where he presented the work of the ILC and held an interesting exchange of views with CAHDI experts.

## Chapter IV (Crimes against humanity)

Please allow me to make a few remarks in relation to **Chapter IV** on Crimes against Humanity.

First of all, I would like to thank the Special Rapporteur, Mr Sean D. Murphy, for the preparation of his "Fourth Report on crimes against humanity" which also included the comments and observations received from States and international organisations. In this respect, I would like to recall that the **Council of Europe submitted comments and observations on 21 November 2017** to the Draft Articles on Prevention and Punishment of Crimes against Humanity, adopted on first reading at the 69<sup>th</sup> Session of the ILC. We would also like to congratulate the ILC for adopting on second reading the entire set of draft articles on prevention and punishment of crimes against humanity together with the commentaries thereto. The Council of Europe welcomes the work of the ILC in this field and supports the recommendation of the Commission to elaborate a convention on the basis of the draft articles on crimes against humanity.

As it was noted by the Special Rapporteur in his different Reports, 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. In 2016, when assessing the actual relevance of this Convention, the Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI) concluded that this Convention could even constitute evidence of international custom as reflected in an important number of judgments issued by the European Court of Human Rights (ECtHR) in which this Convention ETS No.82 has been referred to directly or indirectly.

Taking into account that in our comments we provided comprehensive information on relevant ECHR case law, I will not repeat it here. Allow me to highlight only the important jurisprudence built up by our Strasbourg Court concerning the "**Obligation of prevention**" (**Article 4 of the ILC Draft**) as mentioned in paragraph 10 of the

Commentary to this Draft Article 4: “[...] *States parties have an obligation, pursuant to article 3 of the Convention [ECHR] to prevent torture and other forms of ill-treatment.*”<sup>1</sup>

Furthermore, the extensive ECHR case law concerning “*non-refoulement*” under **Draft Article 5** is also well reflected in the ILC Report (see for instance paragraph 10, page 65, and footnotes 275 to 277)<sup>2</sup>.

In our written comments we also underlined that the Council of Europe attaches and continues to attach great importance to actions under national legislation to ensure the end of impunity for offences constituting crimes against humanity. Therefore, we particularly welcome **Draft Articles 6 and 7** in order to ensure that crimes against humanity constitute offences under national law as well as to establish jurisdiction over such offences.

We welcome **Draft Article 12**, which addresses the rights of victims, witnesses and other affected persons. The protection and assistance of victims as well as reparation to them are key elements of a successful rule of law-based criminal justice response to the most serious crimes of concern to the international community. The Council of Europe has a long-standing practice and experience in this field and has created a legal corpus where the victims – and the witnesses – are placed at the very heart of the justice system. For instance, the 1983 *European Convention on the Compensation of Victims of Violent Crimes*<sup>3</sup> obliges States Parties to compensate the victims of intentional and violent offences resulting in bodily injury or death. In addition, the Committee of Ministers of the Council of Europe adopted several Recommendations addressed to the governments of member states.<sup>4</sup>

Moreover, several conventions concluded within the framework of the Council of Europe contain binding provisions in relation to the assistance and compensation to victims of

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<sup>1</sup> See for instance ECtHR, *A v. United Kingdom*, Judgment of 23 September 1998 and ECtHR, *O’Keeffe v. Ireland [Grand Chamber]*, Judgment of 28 January 2014.

<sup>2</sup> ECtHR, *Saadi v. Italy*, Judgment of 28 February 2008; ECtHR, *Chentiev and Ibragimov v. Slovakia*, Decision as to admissibility of 14 September 2010; ECtHR, *Soldatenko v. Ukraine*, Application No. 2440/07, Judgment of 23 October 2008, Fifth Section; *Othman (Abu Qatada) v. United Kingdom*, Judgment of 17 January 2012.

<sup>3</sup> The *European Convention on the Compensation of Victims of Violent Crimes* (ETS No. 116) was opened for signature on 24 November 1983 and entered into force on 1 February 1988. To date, the Convention has received 26 ratifications/accessions and 8 signatures.

<sup>4</sup> *Recommendation Rec(2005)9 of the Committee of Ministers to member States on the protection of witnesses and collaborators of justice* adopted by the Committee of Ministers on 20 April 2005 at the 924<sup>th</sup> meeting of the Ministers’ Deputies. *Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims* adopted by the Committee of Ministers on 14 June 2006 at the 967<sup>th</sup> meeting of the Ministers’ Deputies.

most serious crimes such as terrorism<sup>5</sup>, trafficking in human beings<sup>6</sup> and violence against women.<sup>7</sup> The rights of victims of international crimes have further been addressed by the ECtHR. For instance, in the *Jelić*<sup>8</sup> case the Court held in 2014 that the relatives of victims of a war crime had a right to an investigation into the circumstances in which their relatives died, and a prosecution against those responsible. Furthermore, the ***Revised Guidelines of the Committee of Ministers of the Council of Europe on the protection of victims of terrorist acts***<sup>9</sup> 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 by incorporating 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 societal recognition of victims - including the role of the media -, and involving victims of terrorism in the fight against terrorism.<sup>10</sup> In short, the Council of Europe strongly believes in the need of adopting a holistic approach in addressing the different needs of victims of crimes.

We welcome the references to the case-law of the European Court on Human Rights regarding the rights of victims in paragraphs 5 and 24 of the Commentary to **Draft Article 12**.

To conclude, I would like to underline that the Council of Europe has a long-standing practice and experience in the field of international cooperation in criminal matters, mainly as regards mutual legal assistance and extradition (**Draft Articles 13 and 14** of the ILC Draft Articles), which are without any doubt a key element for improving the effectiveness and efficiency of the punishment and prosecution of crimes against humanity. Indeed, states providing each other mutual legal assistance and, if the case

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<sup>5</sup> See Article 13 of the *Council of Europe Convention on the Prevention of Terrorism* (CETS No.196). The Convention was opened for signature on 16 May 2005 and entered into force on 1 June 2007. To date, the Convention has received 39 ratifications/accessions and 9 signatures.

<sup>6</sup> See, Chapter III of the *Council of Europe Convention on Action against Trafficking in Human Beings* (CETS No.197). The Convention was opened for signature on 16 May 2005 and entered into force on 1 February 2008. To date, the Convention has received 47 ratifications/accessions.

<sup>7</sup> See Article 30 of the *Council of Europe Convention on preventing and combating violence against women and domestic violence* (CETS No.210). The Convention was opened for signature on 11 May 2011 and entered into force on 1 August 2014. To date, the Convention has received 34 ratifications and 12 signatures.

<sup>8</sup> ECtHR, *Jelić v. Croatia*, no. 57856/11, Chamber judgment of 12 June 2014.

<sup>9</sup> *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 127<sup>th</sup> Session of the Committee of Ministers of the Council of Europe on 19 May 2017 in Nicosia (Cyprus).

<sup>10</sup> 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 126<sup>th</sup> Session of the Committee of Ministers (Sofia, 18 May 2016).

arises, extraditing on the basis of the *aut dedere aut judicare* principle are key factors for an effective prosecution.

The Council of Europe has developed a legal corpus in the field of extradition<sup>11</sup> and mutual legal assistance in criminal matters<sup>12</sup> composed of 8 conventions and protocols which since 1957 are assisting all Parties to effectively cooperate in the prosecution of crime. By the way, Article 1 of the 1975 *Additional Protocol to the European Convention on Extradition* takes a similar approach to the one followed in ILC Draft Article 13 by declaring that certain crimes against humanity and war crimes must not be considered as political offences for the purposes of the Convention.

The 1959 *European Convention on Mutual Assistance in Criminal Matters* and its two Additional Protocols have been ratified/acceded to by all 47 member States of the Council of Europe and three non-member States. These treaties have proven to be effective tools to facilitate judicial cooperation well beyond Europe. We indeed encourage non-members of the Organisation to accede to them. Information on the accession procedure is available at the [Council of Europe's treaty website](#).

We believe that the Council of Europe's experience in this field could be useful in the future development of a universal convention on preventing and punishing crimes against humanity.

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<sup>11</sup> *European Convention on Extradition*, ETS No. 24, of 13/12/1957; *Additional Protocol to the European Convention on Extradition*, ETS No. 86, of 15/10/1975; *Second Additional Protocol to the European Convention on Extradition*, ETS No. 98, of 17/03/1978; *Third Additional Protocol to the European Convention on Extradition*, CETS No. 209, of 10/11/2010; *Fourth Additional Protocol to the European Convention on Extradition*, CETS No. 212, of 20/09/2012.

<sup>12</sup> *European Convention on Mutual Assistance in Criminal Matters*, ETS No. 30, of 20/04/1959; *Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters*, ETS No. 99, of 17/03/1978; *Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters*, ETS No. 182, of 08/11/2001.