

**Mr Miguel de SERPA SOARES**

Under-Secretary-General for Legal Affairs and  
United Nations Legal Counsel  
United Nations Headquarters  
New York, N.Y.10017

Ref PIL (2021)1

Strasbourg, 30 April 2021

Dear Mr de Serpa Soares,

following your letter dated 18 December 2020 (ref. LA/COD/59/2) referring to General Assembly resolution 75/142 of 15 December 2020 inviting relevant observers to the United Nations to submit information and observations on the scope and application of the principle of universal jurisdiction the Council of Europe would like to recall its previous comments and observations made in this context (A/66/93, paras 110-113; A/68/113, paras 34-36, A/69/174, paras 47-51, A/72/112, paras 33-35; A/75/151, paras 53-55) and hereby convey to you the following additional information based on developments since the last Report of the Secretary-General on the matter:

1. In its Recommendation 2197 (2021) on “The protection of victims of arbitrary displacement” (adopted by the Standing Committee, acting on behalf of the Assembly, on 19 March 2021) the Parliamentary Assembly of the Council of Europe recommends that the Committee of Ministers would prepare guidelines for member States on universal jurisdiction of national courts for arbitrary displacement and other war crimes or crimes against humanity. The reply of the Committee of Ministers to this recommendation of the Assembly is currently still outstanding and awaiting the possible comments on the issue from the Committee of Legal Advisers on Public International Law (CAHDI).<sup>1</sup> We will be happy to convey to you the Committee of Minister’s reply once it has been adopted.

2. Moreover, the recent case-law of the European Court of Human Rights includes some noteworthy pronouncements on the possible linkage between the exercise and applicability of universal jurisdiction (among other bases for exercising jurisdiction) by member States, on the one hand, and the creation of a jurisdictional link for the purposes of Article 1 of the European Convention on Human Rights (ETS No. 5), on the other hand:

- In *Güzelyurtlu and Others v. Cyprus and Turkey*<sup>2</sup> the Court found that “if the investigative or judicial authorities of a Contracting State institute their own

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<sup>1</sup> The recommendation was communicated to the CAHDI by the Ministers’ Deputies on 31 March 2021 with a deadline for possible comments by 17 May 2021.

<sup>2</sup> ECHR, *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, 29 January 2019, para. 188.

*criminal investigation or proceedings concerning a death which has occurred outside the jurisdiction of that State, by virtue of their domestic law (e.g. under provisions on universal jurisdiction [...]), the institution of that investigation or those proceedings is sufficient to establish a jurisdictional link for the purposes of Article 1 between that State and the victim's relatives who later bring proceedings before the Court".*

- Without calling into question the general principles set out in the *Güzelyurtlu and Others* judgment the Court, more recently in *Hanan v. Germany*<sup>3</sup>, showed itself also mindful of the concerns raised by the respondent Government and the intervening Governments in the case that "*establishing a jurisdictional link merely on the basis of the institution of an investigation may have a chilling effect on instituting investigations at the domestic level into deaths occurring in extraterritorial military operations and result in an inconsistent application of the Convention in respect of Contracting States participating in the same operation. If the mere fact of instituting a domestic criminal investigation into any death which has occurred anywhere in the world were sufficient to establish a jurisdictional link, without any additional requirements, this would excessively broaden the scope of application of the Convention.*"
- In the Joint Partly Dissenting Opinion<sup>4</sup> appended to the *Hanan* judgment reference was further made to a parallel effect of deducing the jurisdictional link in the meaning of Article 1 of the Convention from the existence of a domestic law obligation to institute criminal proceedings (including in application of the principle of universal jurisdiction): "*In so far as States have not (yet) adopted such a domestic law obligation [...], they may well be discouraged from doing so if this is the last 'missing link' [...] necessary for the jurisdictional link required to trigger the procedural obligation under Article 2 of the Convention. If that were its effect, then this would also risk (further) undermining the engagement of States Parties with the ICC; a consequence which we would consider to be highly undesirable.*"

The Council of Europe avails itself of this opportunity to renew to you, Mr de Serpa Soares, the assurances of its highest consideration.



**Ana Gomez Heredero**  
Head of Treaty Office and Public International Law Division  
Secretary to the Committee of Legal Advisers  
on Public International Law (CAHDI)

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<sup>3</sup> ECHR, *Hanan v. Germany* [GC], no. 4871, 16 February 2021, para. 132, 135.

<sup>4</sup> *Ibid.*, Joint Partly Dissenting Opinion of Judges Grozev, Ranzoni And Eicke, para. 23.