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Draft report of the International Law Commission on the work of its sixty-sixth session

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Chapter III

Specific issues on which comments would be of particular interest to the Commission

A. Subsequent agreements and subsequent practice in relation to treaty interpretation

1. In the context of its consideration of the topic “Subsequent agreements and subsequent practice in relation to treaty interpretation”, the Commission requests States and international organizations:

(a) to provide it with any examples where the practice of an international organization¹ has contributed to the interpretation of a treaty; and

(b) to provide it with any examples where pronouncements or other action by a treaty body consisting of independent experts have been considered as giving rise to, subsequent agreements or subsequent practice relevant for the interpretation of a treaty.

B. Protection of the atmosphere

2. The Commission requests States to provide relevant information, by 31 January 2015, on domestic legislation and the judicial decisions of the domestic courts.

¹ See e.g. “established practice of the organization” in article 2 (b) on the Draft articles on the responsibility of international organizations, *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10), commentary at p. 78, paras. 16 and 17; article 2, para. 1 (j) of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations and between International Organizations, A/CONF.129/15.



C. Immunity of State officials from foreign criminal jurisdiction

3. The Commission requests States to provide information, by 31 January 2015, on their domestic law and their practice, in particular judicial practice, with reference to the following issues:

- (i) the meaning given to the phrases “official acts” and “acts performed in an official capacity” in the context of the immunity of State officials from foreign criminal jurisdiction; and
- (ii) the exceptions to immunity of State officials from foreign criminal jurisdiction.

D. Identification of customary international law

4. The Commission reiterates its request to States to provide information by 31 January 2015, on their practice relating to the formation of customary international law and the types of evidence suitable for establishing such law in a given situation, as set out in:

- (a) official statements before legislatures, courts and international organizations; and
- (b) decisions of national, regional and subregional courts.

5. In addition, the Commission would welcome information about digests and surveys on State practice in the field of international law.

E. Protection of the environment in relation to armed conflicts

6. The Commission would like to have information from States on whether, in their practice, international or domestic environmental law has been interpreted as applicable in relation to international or non-international armed conflict. The Commission would particularly appreciate receiving examples of:

- (a) treaties, including relevant regional or bilateral treaties;
- (b) national legislation relevant to the topic, including legislation implementing regional or bilateral treaties;
- (c) case law in which international or domestic environmental law was applied to disputes in relation to armed conflict.

7. The Commission would also like information from States as to whether they have implemented any instruments aimed at protecting the environment in relation to armed conflict. Examples of such instruments include but are not limited to: national legislation and regulations; military manuals, standard operating procedures, Rules of Engagement or Status of Forces Agreements applicable during international operations; and environmental management policies related to all defence related activities.

F. Provisional application of treaties

8. The Commission reiterates its request to States to provide information, by 31 January 2015, on their practice concerning the provisional application of treaties, including domestic legislation pertaining thereto, with examples, in particular in relation to:

- (a) the decision to provisionally apply a treaty;

- (b) the termination of such provisional application; and
- (c) the legal effects of provisional application.

G. Crimes against humanity

9. The Commission requests States to provide information on:

- (a) Whether the State's national law at present expressly criminalizes "crimes against humanity" as such and, if so:
 - (b) the text of the relevant criminal statute(s);
 - (c) under what conditions the State is capable of exercising jurisdiction over an offender for the commission of a crime against humanity (e.g. when the offense occurs within its territory or when the offense is by its national or resident); and
 - (d) decisions of the State's national courts that have adjudicated crimes against humanity.
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