

## 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

26. The Commission requests, by 31 January 2015, States and international organizations:

(a) to provide it with any examples where the practice of an international organization<sup>5</sup> 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

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

#### C. Immunity of State officials from foreign criminal jurisdiction

28. 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:

(a) 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

(b) any exceptions to immunity of State officials from foreign criminal jurisdiction.

#### D. Identification of customary international law

29. 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 for establishing such law in a given situation, as set out in:

<sup>5</sup> See, for example, “established practice of the organization” in article 2 (b) on the draft articles on the responsibility of international organizations, *Yearbook ... 2011*, vol. II (Part Two), paras. 87–88, paras. (16)–(17) of the commentary (the articles on the responsibility of international organizations adopted by the Commission at its sixty-third session are reproduced in the annex to General Assembly resolution 66/100 of 9 December 2011); article 2, para. 1 (j) of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.

(a) official statements before legislatures, courts and international organizations; and

(b) decisions of national, regional and subregional courts.

30. 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

31. The Commission requests information from States, by 31 January 2015, 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.

32. The Commission would also like information from States as to whether they have 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 defence-related activities.

#### F. Provisional application of treaties

33. 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**

34. The Commission requests States to provide information, by 31 January 2015, 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 alleged offender for the commission of a crime against humanity (for example, 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.