PERMANENT
MISSION
OF AUSTRIA
TO THE UNITED
NATIONS IN NEW YORK

72nd Session

of the General Assembly

Sixth Committee

Agenda Item 81

Report of the International Law Commission

on the Work of its 69th Session

Cluster 1: Chapters I-V & XI (Crimes against humanity; Provisional application of treaties; Other decisions and conclusions of the Commission)

Statement by

Ambassador Helmut Tichy

New York, 23 October 2017

In the interest of time I will deliver a shortened statement orally today, while recalling that the full version will be on record on the Papersmart Platform and will be submitted through the Secretariat for consideration by the ILC.

Mr. Chairman,

With regard to the topic "**Crimes against humanity**" Austria commends the Special Rapporteur, Mr. Sean Murphy, for his extensive third report addressing such important issues as extradition, mutual legal assistance, monitoring mechanisms and dispute settlement. We congratulate him and the Commission on the elaboration of the whole set of draft articles and commentaries. Now the text is completed in first reading and will be submitted to states for their written comments. Austria intends to provide such comments in time.

Already today and speaking generally, I would like to express Austria's support for the elaboration of an instrument, preferably a convention, regarding extradition and mutual legal assistance in cases of crimes against humanity. However, we all are also aware of other relevant international initiatives concerning legal cooperation with regard to the prosecution of atrocity crimes. In order to avoid duplication, the Commission should be fully informed about these initiatives to be able to take them into account.

Permit me nevertheless already now to turn to some specific comments regarding the new draft articles 11 to 15 and the annex. Concerning draft article 11 on the "Fair treatment of the alleged offender", Austria has doubts relating to the present drafting of para. 3 addressing the relationship between the rights of persons in prison, custody or detention and the laws and regulations of the state exercising its jurisdiction. Para. 2 defines the rights of these persons, such as the right to communicate without delay with the nearest representative of their state of nationality. Para. 3, on the other hand, states that such rights "shall be exercised in conformity with the laws and regulations of the State in the territory under whose jurisdiction the person is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purpose for which the rights accorded under paragraph 2 are intended". We are aware that this wording is based on Article 36(2) of the Vienna Convention on Consular Relations as well as on other important international instruments; nevertheless, practice has shown that this wording does not exclude an interpretation according to which national laws and regulations might prevail over the rights of the detainees. Therefore, para. 3 should either be deleted or replaced by a clear rule protecting the rights of the detainees against restrictions based on national law, such as, for instance, that the national laws and regulations "must enable the full exercise of the rights accorded under paragraph 2".

Concerning draft article 13 on "Extradition", Austria interprets para. 6 stating that "[e]xtradition shall be subject to the conditions provided for by the national law of the requested State" as allowing states to refuse the extradition of their own nationals if such refusal is required by their national law. In Austria, constitutional law excludes the extradition of Austrian nationals, apart from extradition in certain cases governed by European Union law. However, non-extradition in a case of a crime against humanity would not lead to impunity, as such crimes are now punishable in Austria under the specific provision of Section 321a of the Criminal Code, introduced in 2016.

As explained in the ILC Commentary to draft article 13(6), other conditions an extradition could be made dependent upon are the exclusion of the death penalty or the respect for the rule of speciality, according to which a trial can be conducted in the requesting state only for the specific crime for which extradition was granted. However, according to the ILC Commentary, certain grounds for the refusal of an extradition based on national law are impermissible, such as the invocation of a statute of limitation in contravention of draft article 6(6) or other rules of international law. It would be interesting to know which other grounds for an impermissibility of a refusal of an extradition based on national law the Commission had in mind, since it mentioned the statute of limitation contravening international law as the only example.

Concerning the ILC Commentary to draft article 13(9), which excludes the obligation to extradite if extradition would lead to a prosecution or punishment based on discrimination, we have doubts relating to para. 26 of that Commentary. The penultimate sentence of this paragraph states that "Third States that do not have such a provision explicitly in their bilateral [extradition] agreements will have a textual basis for refusal if such a case arises." This sentence seems to imply that the multilateral agreement to be concluded could affect the scope of application even of future bilateral extradition treaties. Did the Commission assume that the multilateral agreement would always prevail over future bilateral treaties?

With regard to draft article 14 regarding "Mutual legal assistance", Austria wishes to underline that mutual legal assistance has to be rendered with due respect for the national laws and regulations concerning the protection of personal data. The "without prejudice to national law-clause" of draft article 14(6) offers the basis for such an interpretation.

Although draft article 15 on "Settlement of disputes" follows traditional patterns of dealing with this subject, we wonder, however, why para. 2 does not set a time limit for the negotiations before a case can be submitted to the International Court of Justice? This omission could be used to unduly protract the settlement of a dispute. While the present text leaves the decision as to whether the condition of negotiations has been met or not to the International Court of Justice or to arbitration, a fixed time limit, such as a limit of six months, would undoubtedly facilitate the implementation of this provision.

As regards draft article 15(3), the time for making a declaration to opt out of compulsory dispute settlement should be specified. As in other conventions, it should be stipulated that such declaration may be made no later than at the time of the expression of the consent to be bound by the future convention.

As to the Annex relating to requests for mutual legal assistance where no bilateral agreement applies, we would like to state the following relating to point 8 of this Annex: In our view, mutual legal assistance may be refused not only if the request is not in conformity with the provisions of the draft annex, but also if it is not in conformity with the draft articles themselves.

Finally, I would like to reiterate Austria's understanding that the term "international criminal courts" used in these draft articles includes also hybrid courts.

Mr. Chairman,

The Austrian delegation commends the Commission for consolidating its work on the topic "**Provisional application of treaties**" by provisionally adopting draft guidelines 1 to 11 and the commentaries thereto. We also thank the Special Rapporteur, Mr. Juan Manuel Gómez-Robledo, for his continued work on this topic.

We welcome draft guideline 4 on 'Form of agreement' indicating the various ways in which provisional application may be agreed upon. However, we wish to point out that the agreement on provisional application by a separate treaty may have more stringent consequences than other forms of agreement on provisional application. This applies in particular to the termination of a provisional application.

We note and accept that draft guideline 6 addresses the "Legal effects of provisional application" which are, as the Commentary explains, the legal effects of the treaty applied provisionally and not the legal effects of the agreement to apply provisionally referred to in draft guideline 4. Draft guideline 6 states, however, that provisional application "produces the same legal effects as if the treaty were in force". While this is acceptable as a principle, it is not a principle without exceptions. The Commentary itself states that "provisional application is not intended to give rise to the whole range of obligations that derive" from a treaty in force, and that "termination and suspension" are not subject to the same rules as those applicable to treaties in force. We agree, but in that case one wonders if the generality in which draft guideline 6 refers to "the same legal effects" is not misleading.

This impression is only partly mitigated by the existence of a separate draft guideline 8 on termination, as this guideline does not address suspension at all and, as far as termination is concerned, only takes up the specific case addressed in Article 25(2) of the Vienna Convention on the Law of Treaties, namely termination of provisional application if a state notifies its intention not to become a party to the treaty. While this is one important example for the termination of provisional application, my delegation believes that other situations where provisional application may be terminated should also be considered in the draft guidelines, thereby going beyond Article 25(2) of the Vienna Convention. For example, it may be necessary, for political reasons, to terminate the provisional application of a treaty without definitely expressing the intention never to become a party to it. The Commission itself seems to be of the view that draft guideline 8 does not indicate the only possibility of a termination of a provisional application, as it mentions in the Commentary that this provision was adopted without prejudice to other methods of terminating provisional application. This should be reflected not only in the Commentary, but also in the text of the guidelines themselves.

We support, wherever possible, a flexible approach to the termination of a provisional application of a treaty. However, where a flexible approach is possible and more stringent rules do not apply, it would be advisable to provide for notifications and notice periods to ensure a minimum of stability of provisionally applied treaty relations. For this reason we regret the decision of the Commission not to include such safeguards in its current draft guidelines.

Mr. Chairman,

The Austrian delegation has taken note of the fact that one of the two topics for further deliberation by the ILC which were contained in the annexes to the Commission's report of 2016 was selected by the Commission to be dealt with as a new topic, namely the topic "Succession of States in respect of State Responsibility" which I shall address under Cluster III of this debate. However, the Austrian delegation would also like to draw attention to the second topic that had been presented in that report, entitled "**Settlement of international disputes to which international organizations are parties**", on which Sir Michael Wood had submitted an outline.

As a host state to many international organisations, Austria is particularly interested in this topic and would highly welcome if the Commission decided to appoint a Special Rapporteur who would venture into this field. This is a field of utmost practical importance, in particular if it were not limited to disputes and relationships governed by international law. As we all know, disputes with private parties, governed by domestic law, are most relevant in practice and have raised important questions. These questions include the scope of privileges and immunities enjoyed by international organisations and the requirement of adequate dispute settlement mechanisms. The investigation of this broad subject by a Special Rapporteur would continue the work of the Commission already performed in the field of the law of international organisations.

Mr. Chairman,

Turning now to the topic "**General principles of law**", which the Commission recommended this year for inclusion into its agenda, Austria favours the consideration of this topic by the Commission. The source of international law "general principles of law" is, for the time being, subject to the most divergent interpretations. Therefore, it needs urgent clarification. The Commission is undoubtedly the most appropriate body to embark on this issue.

It is widely acknowledged that the "general principles of law" mentioned in Article 38(1)(c) of the Statute of the International Court of Justice, which have already been recognised in the Hague Rules of 1899 and 1907, are an autonomous source of public international law. According to Sir Robert Jennings and Sir Arthur Watts, these principles are based on the application in the international sphere of "the general principles of municipal jurisprudence, insofar as they are applicable to relations of states".[1] *In other words, a rule qualifies as a general principle of law (a) if it is applied in the main systems of national law and (b) if it is "transposable" into international law.*

Irrespective of the vagueness of the substance of the general principles of law, they have to be clearly distinguished from the general principles of international law although they are frequently treated as identical. Whereas the general principles of international law are general normative concepts created by customary international law or by treaties, the general principles of law originally reside in the legal framework of national law and acquire their nature as sources of international law only through acknowledgment as such by the states.

The paper on general principles of law, prepared by ILC member Vázquez-Bermúdez and annexed to the Commission's report, refers to the view of Tunkin, who advocated an

[1] Sir Robert Jennings and Sir Arthur Watts, Oppenheim's International Law, 9th ed., Longman, London, 1992, p. 37 (footnote omitted).

interpretation of principles of law as principles of international law. This view resulted from the Soviet ideology of international law which rejected any deduction of rules of international law from rules of national law, since, according to this view, the law of states with different social structures could not coincide and thus could not develop common legal principles. We do not believe that future work of the Commission on general principles of law should be based on this outdated view which most countries, including my own, do not share.

Tunkin belonged to those who deducted from the introductory sentence of Article 38 of the ICJ Statute a meaning of principles of law that corresponds to principles of international law. One has to point out, however, that the insertion of the particular reference that ICJ decisions were to be taken "in accordance with international law" into the chapeau of Article 38 of the ICJ Statute was only designed to explain that the sources of law to be applied by the Court are sources of international law.

The uncertainties inherent in the notion of general principles of law have impeded the ICJ to resort to these principles explicitly, which makes a clarification by the Commission most welcome. In this respect, it would first be necessary to define general principles of law, including the notion of principles as such, and to distinguish them from other concepts, such as rules or norms. Moreover, the Commission would have to address the origin of general principles of law, the method of their identification, their nature, their functions and their limits.

In sum, my delegation is convinced that this work of the Commission on general principles of law will substantially contribute to the clarification of a vague, but important source of international law.

We note that the Commission's report also contains a proposal for a further new topic "**Evidence before international courts and tribunals**" and a paper explaining the possible scope of this topic. Permit me to say that Austria is rather reluctant to support specific work of the Commission on this topic, as we believe that it is for the international courts and tribunals themselves to assess the value of evidence and that for this purpose no general rules elaborated by the Commission are necessary.

PERMANENT
MISSION
OF AUSTRIA
TO THE UNITED
NATIONS IN NEW YORK

72nd Session

of the General Assembly

Sixth Committee

Agenda Item 81

Report of the International Law Commission

on the Work of its 69th Session

Cluster 2: Chapters VI & VII (Protection of the atmosphere; Immunity of State officials from foreign criminal jurisdiction)

Statement by

Ambassador Helmut Tichy

New York, 26 October 2017

In the interest of time I will deliver a shortened statement today. The full version will be on record on the Papersmart Platform.

Mr. Chairman,

Concerning the topic "**Protection of the atmosphere**", the Austrian delegation commends the Special Rapporteur, Professor Shinya Murase, for his fourth report regarding, in particular, the interrelationship between the rules of international law on the protection of the atmosphere and the rules of international law in other areas, namely international trade and investment law, the law of the sea and international human rights law.

The three new preambular paragraphs provisionally adopted by the Commission which relate to the interaction between the atmosphere and the oceans, the special situation of low-lying coastal areas and small island developing states and the interests of future generations reflect situations and effects which are generally recognised and have already been addressed in the discussions on the law of the sea within the United Nations and the International Maritime Organization. Particular emphasis was put on the effect of global warming on the rise of the sea-level as well as on the interests of future generations. Although other effects of global warming, such as the effect of the degradation of the atmosphere on human health, could also have been highlighted, the emphasis on the situations and effects now mentioned in the new preambular paragraphs is well-founded.

The new draft guideline 9 provisionally adopted by the Commission, called "Interrelationship among relevant rules", addresses a central issue of the present topic and shows that the protection of the atmosphere is a horizontal or cross-cutting matter. The topic of protection of the atmosphere is characterised by a number of overlaps with other fields of international law. This leads to the question of compatibility. According to draft article 9(1), possible conflicts should be avoided by resorting to "principles of harmonization and systemic integration". These principles, although they were already addressed in the 2006 report of the ILC Study Group on Fragmentation of International Law, have never been clearly defined, and their relationship to Articles 30 and 31(3)(c) of the Vienna Convention on the Law of Treaties, which are referred to in draft guideline 9, is still not fully determined. In any case, applying the principles of harmonisation and systemic integration should not lead to a reduction of the intended protection of the atmosphere.

Draft guideline 9(2) could be understood as requiring that new rules for the protection of the atmosphere have to be compatible with all existing rules of international law, which would impede any new development that substantially differs from existing rules. We do not believe that such a restriction of the future development of norms should be envisaged.

Draft guideline 9(3) quite rightly demands special consideration for persons or groups particularly vulnerable to atmospheric pollution and atmospheric degradation. However, my delegation is of the view that the specific groups mentioned in this paragraph, i.e. indigenous peoples and people of least developed countries, low-lying areas and small island developing states, not only "may", but rather "should" be included among the particularly vulnerable groups. If their inclusion is only optional, they could also be excluded. The demonstrative effect that according to the ILC Commentary should be reflected by the term "may" is already sufficiently expressed by "inter alia".

Concerning the particularly vulnerable groups we note that the ILC Commentary on draft guideline 9 refers in point 16 to the fact that the World Health Organization has also included people living in mountainous regions among those particularly vulnerable. In this context, we would like to draw attention to the contribution, as far as our own region is concerned, of the Alpine Convention and its Protocols, in particular those on Nature protection and landscape conservation and on Mountain forests, to the protection of the atmosphere.

Mr. Chairman,

Turning to the topic **"Immunity of State officials from foreign criminal jurisdiction"**, the Austrian delegation appreciates the work of the Special Rapporteur and of the Commission on this highly important and certainly controversial topic. It welcomes the fact that the Commission was able to discuss the fifth report of Special Rapporteur Escobar Hernández presented already in 2016 which addressed the crucial issue of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction. Austria has taken note of the fact that the Commission even took the unusual step of voting on the adoption of proposed draft article 7.

As already expressed in past years, the Austrian delegation, in principle, is in favour of the proposed exceptions and limitations to immunity *ratione materiae*. However, my delegation understands the need for clarification whether these exceptions and limitations already reflect customary international law or are more of a progressive development character. We believe it would be useful if the Special Rapporteur and the Commission could make additional efforts to indicate to what extent the exceptions and limitations under consideration reflect already existing customary international law. Whatever the outcome of the work of the Commission on this topic, such indication would provide essential guidance for the assessment of the existence or not of immunity by national courts and other authorities.

In principle, Austria concurs with the idea expressed by the Special Rapporteur and reflected in paragraph 84 of the report that the Commission should support a developing trend in the field of immunity, rather than halt such a development. In particular, the Austrian delegation shares the view expressed in paragraph 109 of the report that perpetrators of international crimes ought not to be allowed to hide behind the cloak of sovereignty to shield themselves from prosecution as their acts ultimately affect the international community as a whole. Indeed, the purpose of exceptions and limitations to immunity from criminal jurisdiction is the protection of human rights and the fight against impunity which are part of the fundamental interests of the international community.

At the same time, the Austrian delegation sees a clear link between exceptions and limitations to immunity on the one side and efficient procedural safeguards on the other. Already last year, we suggested that restrictions of immunity should be combined with procedural safeguards in order to avoid misuse and politically motivated criminal prosecutions of state officials in foreign countries. We wish to reiterate that one possible solution would be to create an international mechanism aiming at the prevention of such misuse. Such a mechanism could be inspired by the provisions on interim measures and other urgency procedures before international courts and tribunals, and the proposed

immunity restrictions could be made conditional upon the establishment of such a mechanism. However, we are also ready to consider other procedural safeguards which would guarantee an effective prosecution by national or international courts.

In that spirit, Austria looks forward to the Special Rapporteur's suggestions in her next report regarding procedural safeguards.

Regarding the crimes listed in draft article 7(1) provisionally adopted by the Commission, in respect of which immunity shall not apply, the Austrian delegation agrees with the approach to limit the exceptions to specific crimes under international law.

With regard to the crime of corruption my delegation sympathises with the view that corruption, although it usually involves some official activities, is itself an abuse of an official position for private gain and cannot therefore be regarded as an act performed in an official capacity. However, if this interpretation was generally accepted and immunity therefore not available in cases of alleged corruption, procedural safeguards would also in this context be necessary, as allegations of corruption are especially susceptible to misuse.

PERMANENT
MISSION
OF AUSTRIA
TO THE UNITED
NATIONS IN NEW YORK

72nd Session

of the General Assembly

Sixth Committee

Agenda Item 81

Report of the International Law Commission

on the Work of its 69th Session

Cluster 3: Chapters VIII-X (Peremptory norms of general international law (jus cogens); Succession of States in respect of State Responsibility; Protection of the environment in relation to armed conflicts)

Statement by Austria

New York, 31 October 2017

In the interest of time I will deliver a shortened statement today. The full version will be on record on the Papersmart Platform.

Mr. Chairman,

The Austrian delegation commends Special Rapporteur Dire Tladi for his informative second report on the topic of "**Peremptory norms of general international law (jus cogens)**". My delegation considers the issue of jus cogens to be of central importance and does not see a need to change the title of the topic from "Jus cogens" to "Peremptory norms of general international law (jus cogens)". Jus cogens is a well-established concept that does not need further precision. If considered necessary, "jus cogens in international law" would appear to be sufficient. At the same time the currently proposed title of "Peremptory norms of general international law (jus cogens)" is not objectionable.

On a technical matter, my delegation notes that the Commission's report only reproduces, in a footnote, the draft conclusions 4 to 9 as proposed by the Special Rapporteur in his second report while it does not contain the draft conclusions 1 to 7 provisionally adopted by the Drafting Committee. To the latter, only a reference is made directing the reader to the Commission's homepage. It would have been preferable to have also the text of the provisionally adopted conclusions in the report itself and to receive clear guidance on which set of draft conclusions states are invited to comment.

My delegation wishes to reiterate that an illustrative list of jus cogens norms would be one of the crucial benefits of the Commission's work on this topic. Therefore, we are satisfied to read in the Commission's report that in this year's session most members favoured the preparation of such a list in the context of the current study. While other members were of the opinion that this would take a disproportionately large amount of time to prepare, we believe that this time would be well invested.

As regards the draft conclusions provisionally adopted by the Drafting Committee, the Austrian delegation wishes to add the following remarks:

Concerning draft conclusion 2 on the "General nature of peremptory norms of general international law (jus cogens)", my delegation concurs with the view that the hierarchical superiority of jus cogens norms is rather a consequence than a characteristic or precondition for the qualification of jus cogens norms as such. This view now seems to be adequately reflected in draft conclusion 2. This conclusion also refers to the universal applicability of jus cogens norms; in this context, we suggest that the Commission also considers the relationship between universal applicability and the possibility of persistent objectors.

With respect to draft conclusions 3 and 4, it appears that draft conclusion 4, which contains "Criteria for identification" of a jus cogens norm, largely overlaps with the criteria used to define a jus cogens norm in draft conclusion 3. My delegation shares the view expressed during the Commission's discussion as referred to in the report that the existing overlap could be avoided through a better stream-lining or even merger of these provisions.

Regarding draft conclusion 5 on "Bases for peremptory norms", the Austrian delegation supports the view expressed in para. 1 that "the most common basis for the formation of jus cogens" would be customary international law. Concerning para. 2, it seems doubtful whether also treaty provisions, including some that are not universally applied or even contained in multilateral treaties, might "serve as bases" for jus cogens norms. My delegation would therefore prefer the text of the draft conclusion as proposed by the Special Rapporteur, according to which "a treaty rule may reflect a norm of general international law capable of rising to the level of a jus cogens norm of general international law".

My delegation would appreciate if the Special Rapporteur, who in his extensive analysis of cases has exclusively discussed customary international law, could identify examples of jus cogens norms deriving from general principles of law and treaty rules as well.

The newly added para. 1 of draft conclusion 6 does not seem necessary. Furthermore, the wording of this paragraph is not very clear as it could be asked whether the "acceptance and recognition as a norm of general international law" should rather read "acceptance and recognition of a norm as one of general international law". Finally, one could ask whether the reference to "acceptance and recognition" can be applied to general principles of law.

With regard to para. 2 of draft conclusion 6 Austria is of the view that this provision is redundant in light of draft conclusion 4(b), since it only duplicates the wording of the latter.

With regard to the debate that obviously took place within the Commission as to the exact meaning of the notion "international community of states as a whole" in draft conclusion 7, we share the view that although that notion may not require participation of "all states", it certainly requires a "very large majority" of or virtually all states. Such language has been usefully added to the current wording of draft conclusion 7(2).

Mr. Chairman,

The Austrian delegation wishes to congratulate Mr. Pavel Šturma on his appointment as Special Rapporteur for the topic "**Succession of states in respect of state responsibility**" and commends him for offering already a very substantive first report shortly after his appointment. Still, Austria needs to reiterate its hesitation in regard to the topic chosen as already expressed in its statement last year.

In our opinion this highly controversial topic was wisely excluded from previous work of the ILC. Recent discussions of this topic by the International Law Association as well as the Institut de Droit International have shown that state practice is extremely scarce. It is questionable whether some of the few cases discussed by the Special Rapporteur in his first report provide enough substance for asserting any exceptions to the firmly established rule of "non-succession" into the responsibility for internationally wrongful acts.

My delegation has noted that even the Special Rapporteur himself has been careful to state that it is unclear whether any general rules providing for succession into responsibility exist. Still, the title chosen by the Commission suggests that there may be situations in which a successor state automatically succeeds into the responsibility incurred by a predecessor state in regard to that other state's wrongful act. This implicit suggestion is unfortunate and it

would have been more apt to speak of the topic of "**State responsibility problems in cases of succession of states**". In fact, the examples provided by the Special Rapporteur in his first report mostly relate to situations where successor states become responsible because they continue the unlawful acts of their predecessors or endorse them or even voluntarily assume secondary obligations arising from internationally wrongful acts committed by the predecessor states.

It is the conviction of the Austrian delegation that what the Special Rapporteur has termed the "traditional view" that a successor state does not succeed into the responsibility for internationally wrongful acts of a predecessor state reflects the existing state of international law. With that in mind it is hoped that the Commission's work on this new topic will lead to a clarification of the concept of state responsibility and the effects of instances of state succession.

Mr. Chairman,

Finally, on the topic of **"Protection of the environment in relation to armed conflicts"**, we welcome the appointment of Marja Lehto as Special Rapporteur and wish her success for her work on this important but at the same time difficult subject. We trust that her efforts will lead to a clarification of the relationship between environmental law and international humanitarian law.

As far as international humanitarian law is concerned, the main issue at the moment is not the establishment of new rules and standards, but an improvement of the compliance with its existing rules. Austria, together with many other states, supports the efforts of Switzerland and the International Committee of the Red Cross to reform the international humanitarian law compliance mechanisms and to increase their efficiency.

As current chairmanship-in-office of the Organization for Security and Cooperation in Europe, Austria was able to contribute to the first activation of the good offices of the International Humanitarian Fact Finding Commission under Article 90 of the First Additional Protocol to the Geneva Conventions in connection with an incident on 23 April 2017 in Eastern Ukraine involving the death of an OSCE team member, injuries of two OSCE team members and the destruction of an OSCE vehicle. The Fact Finding Commission was able to render essential assistance to the OSCE Secretary General in the selection of the members of the independent team of experts tasked to conduct a forensic post-blast investigation of that incident and to submit a report to the OSCE.

In concluding, therefore, as compliance depends on a clear understanding of the existing norms, we support the examination of the topic "Protection of the environment in relation to armed conflicts" by the Commission and are waiting with interest to receive the first report of the new Special Rapporteur.