

73rd Session of the Sixth Committee of the General Assembly of
the United Nations

Report of the International Law Commission on the work of its
70th Session

Cluster 1 (Chapters I, II, III, IV, V, XII and XIII)

Please allow me to make a few remarks in relation to Chapter III (Specific issues on which comments would be of particular interest to the Commission), Chapter IV (Subsequent agreements and subsequent practice in relation to the interpretation of treaties) and Chapter V (Identification of customary international law) of the Second Report.

1. Chapter III (Specific issues on which comments would be of particular interest to the Commission: Succession of States in respect of State Responsibility)

On the specific issues on which comments would be of particular interest to the ILC, I would like to thank the Special Rapporteur, Mr Pavel Toman, for his Second Report on this subject which we have examined with great interest. We welcome the progress made in relation to this subject.

Indeed this matter is of particular importance for the Council of Europe taking into account the enlargement of our Organisation's membership following the numerous cases of succession of States in Central and Eastern Europe in the 1990s and the subsequent legal consequences and impact on the State responsibility rules (e.g. treaty law). In this respect, we welcome the references made in the Second Report to the case law of the *European Court of Human Rights* (ECtHR)¹ in the context of the relevant rules on State responsibility, in particular those on attribution and breach of an international obligation.

In relation to this subject, I would like to draw your attention to the *Pilot Project of the Council of Europe on State Practice regarding State Succession and Issues of Recognition* carried out under the aegis of the *Committee of Legal Advisers on Public International Law* (CAHDI) as mentioned in the Second Report. For the Pilot Project sixteen member States of the Council of Europe submitted national reports covering official documents and

period from 1989 to 1995. On the basis of the information gathered, the CAHDI entrusted several experts to prepare a Report with the aim of analysing the practice of the contributing member States. We believe that this detailed study, available as a Council of Europe Book², could be of interest for the work of the International Law Commission and the Special Rapporteur concerning this topic.

2. Chapter IV (Subsequent agreements and subsequent practice in relation to the interpretation of treaties)

First of all, I would like to thank the Special Rapporteur, Mr Georg Nolte, for his comprehensive Reports. The fifth Report on subsequent agreements and subsequent practice in relation to the interpretation of treaties is of particular importance to the Council of Europe, taking into account the wide range of expert treaty bodies existing within our Organization.

The ILC Report refers to the interpretation of the *European Convention on Human Rights* and related case law of *European Court of Human Rights* in the commentaries of eight of the 13 draft conclusions on this topic adopted on second reading this year. I would like to highlight a few references made in the commentaries:

- as regards the commentary to paragraph 3 of the draft conclusion 4 *fl subsequent practice in the application of the treaty as a supplementary means of interpretation under Article 32* was ¹ denoting practically universal agreement amongst Contracting Parties. The

Finally, I would like to thank the Secretariat for the