



PERMANENT MISSION
866 SECOND AVENUE, NEW YORK, N.Y. 10017-2903
Tel: 212 886 6000, Fax: 212 886 4140
e-mail: ondal@un.org

www.un.org

68TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

Sixth Committee

Agenda Item 81

Report of the International Commission
on the work of its subsidiary bodies

Chapter I

Chapter VII: Information and communication systems

Chapter VIII: Provisional application of treaties

Chapter IX

State

Maria Telalian

Legal Adviser, Head of the Legal Department,
Ministry of Foreign Affairs

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disasters), but also the technically advanced measures call for the cooperation between all stakeholders, namely the State upon which the duty of risk reduction is incumbent and the relevant assisting actors (international organizations and/or non-international actors), in order for the object and purpose of the Convention to be fully achieved.

We therefore welcome any consideration by the Commission of article 16, which would read that each State in the performance of its duty to reduce the risk of loss of life and property shall be guided by the principles provided for in article 5, where appropriate.

Finally, with respect to articles 5 bis, 12 to 15 adopted by the Commission at its 63rd session in May 2013, we take note of the approach as regards the content of these provisions, in particular (facilitation of assistance) and 13 (provision of external assistance), which may prove instrumental in removing administrative or other obstacles for the timely provision or termination of assistance.

B. Chapter VII: Formation and evidence of customary international law.

Mr. Chairman,

Allow me first of all to commend the quality of his first Report.

We would also like to express our agreement as regards the International Law Commission's decision to change the title of the topic which will now deal with customary international law. In our view, the identification process is useful for judges and practitioners who are called to apply or to rely on customary international law rules, both at the domestic as well as at the international level. While not underestimating the importance of the process of formation of customary international law, it is in our view of crucial importance that States are in search of the eventual existence of a customary rule of international law and thus they should be guided with the task and aim to ascertain a certain law-creation process has been concluded and has led to the creation of an international rule.

The open-ended approach of the Special Rapporteur Mr. Michael Wood provided the materials to be taken into consideration that range from views of States to scholarly writings, gone hand in hand with the inherent flexibility of the topic which is one of the most theoretical topics ever put on the agenda of the International Law Commission. In this context, the views already expressed in the past by the International Law Commission are extremely valuable in assessing the state practice and the existence of a customary rule of international law and we would like to thank the Secretariat for its compilation of this approach in its document A/CN.4/659 (2013).

Since this is a novel venture, the main objective is to provide a useful guide for States and lawyers in the Special Rapporteur's and the Commission's work. The Commission placed more emphasis on the process of formation of customary international law.

Conventional. However, given the disparity of State practice and the divergence of views expressed with regard to the provisional application of international law, the Commission should believe that the rules embodied in Article 25 reflect a widely shared view.

Moreover, the variety of the situations which give precedence to the treaty itself and the relevant provisions contained therein and may, therefore, call for in-depth consideration of the feasibility and the opportunity of the study undertaken by the Commission. As already mentioned by the Special Rapporteur, flexibility is one of the key features of the concept of provisional application and, in that context, it would be desirable for States to determine the legal consequences of provisional application, as well as to determine the legal consequences of a breach of a provision of a treaty in a case.

For this reason, we share the view already expressed by some members of the Commission that it is too early to take a position on the final outcome of the work of the Commission including on the its final

model clauses, it should, in our view, focus on assisting States in the implementation of international agreements full effect. Within this framework, it would be useful to highlight some questions which have not been sufficiently addressed by the Vienna Convention and could be further explored in the future.

Of all these questions, the most important is the issue of the legal consequences of provisional application. Taking into account that Article 25 of the Vienna Convention uses the term "provisional application" instead of "provisional application", it is suggested by the Commission, it is a fact rather than an issue of law. Accordingly, the view expressed by the Special Rapporteur that such effects "could depend on the way in which the provisions of the Convention are being provisionally applied" is correct.

It is not accurate to claim that a State may be found responsible for "breach of an obligation" arising out of a rule being provisionally applied. The situation of individuals, which may be affected by such a breach, should be taken into account.

Another important issue is the termination of provisional application including in connection with its temporal scope. The text of Article 25 of the Vienna Convention, which provides that a treaty may be provisionally applied "pending its entry into force" seems to suggest that provisional application of treaties is a rather transitional situation. It is, therefore, suggested that the Commission should not be unduly concerned with this issue.

Finally, we consider that a distinction between multilateral and bilateral treaties is of relevance in the context of the current work of the Commission on this topic. In the existing State practice, some of the parties to a multilateral treaty may agree *inter se* to apply it provisionally. It would, therefore, be interesting to determine the relationship between the

above parties and those which do not provide for a similar provision by separate agreement, which may be tacit. Moreover, regarding the accession of States which have not taken part in the drawing up of the Convention, article 11 (1) (e) of the Vienna Convention

D. Chapter IX: Protection of the environment in relation to the sea

Mr. Chairman,

While topics such as the protection of cultural property in times of armed conflict, the law of the sea, both international and domestic, as well as a wide range of other subjects have been widely covered by a large number of normative instruments aiming to regulate human activities, the ILC's decision to consider this topic reveals a growing awareness of the adverse impact on the environment of human activities, both international and non-international.

We are of the view that a comprehensive approach of the subject of the protection of the environment in international law, such as an environmental convention, would result in a more complete picture of the subject. It is suggested that a report to the Commission will be prepared which will deal with the issues raised by the Commission, taking into account the relevant principles, taking also into account the relevant provisions of the Convention.

Thank you Mr. Chairman.