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STEERING COMMITTEE FOR HUMAN RIGHTS /

COMITÉ DIRECTEUR POUR LES DROITS DE L'HOMME

(CDDH)

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COMMITTEE OF EXPERTS ON THE SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS /

COMITÉ D'EXPERTS SUR LE SYSTÈME DE LA CONVENTION EUROPÉENNE DES DROITS DE L'HOMME

(DH-SYSC)

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Comments on the Preliminary draft CDDH report on the place of the European Convention on Human Rights in the European and international legal order, in view of the 5th DH-SYSC meeting /

Commentaires sur l'Avant-projet de Rapport du CDDH sur la place de la Convention européenne des droits de l'homme dans l'ordre juridique européen et international, en vue de la 5e réunion du DH-SYSC

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Introduction

1. At its 7th and last meeting (18–20 September 2019), the Drafting Group on the place of the European Convention on Human Rights in the European and international legal order (DH-SYSC-II) adopted the Preliminary draft CDDH Report on the place of the European Convention on Human Rights in the European and international legal order (document DH-SYSC-II(2019)R7 Addendum).

2. The Preliminary draft CDDH Report is now submitted to the DH-SYSC for consideration and possible adoption of a draft Report at its 5th meeting (15–18 October 2019).

3. This Preliminary draft CDDH Report was sent to the participants in the DH-SYSC meetings in September 2019. They were invited to send their written comments in the form of drafting proposals on the text by 8 October 2019. The present compilation contains these comments.

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Introduction

1. Lors de sa 7e et dernière réunion (18–20 septembre 2019), le Groupe de rédaction sur la place de la Convention européenne des droits de l'homme dans l'ordre juridique européen et international (DH-SYSC-II) a adopté l'Avant-projet de Rapport du CDDH sur la place de la Convention européenne des droits de l'homme dans l'ordre juridique européen et international (document DH-SYSC-II(2019)R7 Addendum).

2. L'Avant-projet de Rapport du CDDH est désormais soumis au DH-SYSC pour examen et adoption éventuelle d'un projet de Rapport lors de sa 5e réunion (15–18 octobre 2019).

3. Cet Avant-projet de Rapport a été envoyé aux participants aux réunions du DH-SYSC en septembre 2019. Ils ont été invités à envoyer leurs commentaires écrits, sous forme de propositions de rédaction, sur le texte jusqu'au 8 octobre 2019. La présente compilation contient ces commentaires.

Member States / États membres

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

[…]

I. THE CHALLENGE OF THE INTERACTION BETWEEN THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND OTHER BRANCHES OF INTERNATIONAL LAW, INCLUDING INTERNATIONAL CUSTOMARY LAW

1. Methodology of interpretation by the European Court of Human Rights and its approach to international law

[…]

65. However, on ~~numerous~~ ***some*** occasions the Court has held that it cannot rely exclusively on the intention of parties of the ECHR for deducing the meaning of certain terms. As mentioned by the Court in its *Loizidou* judgment (1995) "[…] these provisions cannot be interpreted solely in accordance with the intentions of their authors as expressed more than forty years ago"[1].

[…]

72. However, the Court is not alone in resorting to these innovative techniques of interpretation. The two interpretative methods may also be found in other international courts and tribunals' jurisprudence.[2] By way of example, the so-called evolutive or dynamic interpretation was similarly applied by the Inter-American Court of Human Rights.[3] Likewise, the doctrine of autonomous concept is commonly applied by the CJEU[4] or the Inter-American Court of Human Rights.[5]

[…]

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[1] *Loizidou* (preliminary objections), cited above, § 71.

[2] ~~Even if the ICJ does not apply human rights treaties,~~ **I**~~i~~t can be noted that the ICJ ~~it~~ had**s** occasional recourse to the evolutive interpretation approach, see, for instance, ~~*Costa Rica v. Nicaragua and Nicaragua v. Costa Rica*, judgment of 16 December 2015~~ ***dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2009, p. 213. However, see Case concerning rights of nationals of the United States of America in Morocco, Judgment of August 27th, 1952: I.C. J. Reports 1952, p. 176; Kasikili/Sedudu Island (Botswana/Namibia), Judgment, I.C.J. Reports 1999, p. 1045.***

[3] See, for example, *Supreme Court of Justice (Quintana Coello et al.) v. Ecuador* of 23 August 2013, § 153; *Mapiripán Massacre v. Colombia*, 2005c, § 106 or in its advisory opinion on the interpretation of the American Declaration of the Rights and Duties of Man OC-10/89 of 14 July 1989, Series A No. 10, at § 37. See also LIXINSKI, Lucas. *Treaty Interpretation by the Inter-American Court of Human Rights: Expansionism at the Service of the Unity of International Law*. The European Journal of International Law, Vol. 21, no. 3, 2010.

[4] See, amongst many authorities, C-66/85 *Lawrie-Blum*, ECLI:EU:C:1986:284 as to the autonomous meaning of the notion of „worker" under the EU law.

[5] See *Mapiripán Massacre v. Colombia*, 2005c, § 187 or *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 2001, § 146.

81. The requirement in Article 31(3)(c) of the VCLT that other rules of international law are taken into account when interpreting a treaty, is an important factor in avoiding the risks of fragmentation of international law. As will become clear in the subsequent chapters***, the Court does not always follow the general international law approach, while*** it is essential for States Parties that there is clarity and consistency in the Court's case-law when dealing with these issues. ***Concerns have been raised by certain member States[6], by some members of the Court in separate opinions[7] and in academia[8] as to the question whether the Court always achieves an interpretation of the Convention which is in harmony with other provisions of international law. In its report on the longer-term future of the system of the ECHR the CDDH[9] noted that an interpretation of the Convention which is at odds with other instruments of public international law could have a detrimental effect on the authority of the Court's case law and the effectiveness of the Convention system as a whole.***

82. The Court has referred to both the subsequent practice of the States Parties to the ECHR (Art 31(3)(b) VCLT) and other rules of international law (Art 31(3)(c) VCLT) as a means of tacit modernisation of the provisions of the ECHR by the States. Where the Court seeks to establish a "European consensus" in this respect, it is important that such consensus is based on an analysis of the practice and specific circumstances of the States Parties in line with the consensual nature of State obligations under international law. ***The Court's reference to the subsequent practice of not all but only a majority of the States Parties of the ECHR may potentially lead to an outcome that does not take into account these factors.***

83. In addressing the need to apply the ECHR in present day circumstances and to ensure that the rights are practical and effective, the Court uses dynamic interpretative approaches. However, the traditional rules of treaty interpretation and the consensual nature of international law, as well as the need to avoid fragmentation of the latter, place limits on such approaches. It is important therefore that the Court explains ***and keeps*** its methods of interpretation within these limits and that the outcomes reached are predictable and understandable for the Contracting States in line with the obligations they have undertaken under the ECHR.

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[6] The Russian Federation expressed deep concerns as to the quality of some Court judgments where "the Court departs from the existing system of international case law which, in turn, could lead to the fragmentation of public international law" (p. 99 of the Proceedings of the 2015 Brussels Conference).

[7] See for example the separate opinion of Judge Spielmann, joined by Judge Raimondi, in the case of Jaloud v. the Netherlands (Grand Chamber judgment of 20 November 2014, App. No. 47708/ 08) in which certain parts of the judgment are described as "ambiguous, subsidiary and incomprehensible". See also the separate opinion of Judge Motoc in the same case: "[...] questions concerning the relationship between general international law and the human rights provided for in Article 1 have still to be clarified, as do the various conflicts of norms which may arise in the course of that Article's application". And Judge Kovler in the case of Catan and Others v. Moldova and Russia [GC], App. Nos. 43370/04, 8252/05 and 18454/06, 19 October 2012.

[8] See, for example James Crawford, "The structure of State responsibility under the European Convention of Human Rights" at the Conference The European Convention on Human Rights and General International Law, organised by the Court and the European Society of International Law (ESIL) on 5 June 2015. Mr Crawford identified various areas in which there is potential divergence from the rules on State responsibility. See also Sir Daniel Bethlehem, "When is an act of war lawful?" Report delivered at the seminar organised by the Court in honour of the Deputy Registrar of the European Court of Human Rights Michael O'Boyle, 13 February 2015.

[9] Paragraph 186.

2. State responsibility and extraterritorial application of the European Convention on Human Rights

a. INTRODUCTION

84. In considering the place of the European Convention on Human Rights ~~("the Convention", ECHR)~~ in the European and international legal order, a key focus of the European Court of Human Rights' ~~("the Court" / ECtHR)~~ case-law and academic commentary has been on the core obligation contained in Article 1 of the Convention that State Parties shall secure to everyone within their "jurisdiction" the rights and freedoms set out in the Convention. The vast majority of cases brought before the Court concern challenges to the actions of a State within its territory; as jurisdiction is presumed to be exercised normally throughout the State's territory, it is usually clear that a State has "jurisdiction" and the notion does not require further interpretation. However, a respondent State may notably dispute the questions of "jurisdiction" and responsibility where it acts outside its own territory.

[…]

91. When regarding the place of the Convention in the European and international legal order, it is important to examine if the notion of "jurisdiction" and its extraterritorial application differ in general international law and under the Convention and if so, to what extent (~~A.~~***B.***). Likewise, the application or respect of the general international law on State responsibility by the ECtHR in its case-law merits a closer analysis (~~B.~~***C.***). On this basis, possible risks of fragmentation between the different legal systems shall be identified and discussed under both sections.

b. JURISDICTION AND EXTRA-TERRITORIAL APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

[…]

95. The term "jurisdiction" is not elaborated further by the Convention. ***Interpretation of the term is one of the most pressing and still pending issues both for the ECtHR and the States Parties to the Convention.*** In the case of *Banković*, one of its important decisions on the topic, the Court affirmed that State jurisdiction as referred to in Article 1 is "primarily territorial".[10] Yet the phrase "within their jurisdiction" rather than "within their territory" might imply that the ECHR Contracting Parties' obligations can extend beyond their territory.

[…]

108. Following its decision in the *Banković* case, the Court ~~further developed~~ ***moved in*** its case-law on extra-territorial jurisdiction ***to a more extensive interpretation of Article 1*** ; both the decision in *Banković* and the Court's subsequent case-law have been the subject of numerous comments and shall be further analysed below.[11]

[…]

112. In its ***important*** *Al-Skeini* judgment[12], ~~another leading case,~~[13] the Grand Chamber

[10] *Banković and Others,* cited above, § 59.
[11] See the "Challenges and possible solutions" section, §§ 46 *et seq*.
[12] *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, 7 July 2011.
~~[13] See for this assessment also Marko Milanovic, Al-Skeini and Al-Jedda in Strasbourg, European Journal of International Law, Vol. 23, no. 1, p. 121.~~

elaborated further on the concept of extraterritorial jurisdiction under the Convention. The case concerned the applications of six Iraqi nationals brought in respect of actions of UK forces in Iraq in 2003, when the latter were seeking to establish security and support civil administration in and around Basra; the applicants' relatives were killed during the security operations in question.

[…]

122. In relation to the Court's category of extraterritorial application on the basis of "effective control of an area", there have been ~~developments~~ **significant expansion** as regards the factors the Court will consider, notably in the ***contradictory***[14] Court's judgment in *Catan and Others v. the Republic of Moldova and Russia.*[15] The case concerned the complaint lodged by children and parents belonging to the Moldovan community in Transdniestria about the effects of a language policy adopted by the separatist regime of the "Moldavian Republic of Transdniestria" ("MRT") prohibiting the use of the Latin alphabet in schools and the subsequent measures to implement that policy. The Court, in establishing that the applicants were within Russia's jurisdiction for the purposes of Article 1, looked beyond the question of the establishment of the "MRT" as a result of Russian military assistance (in 1991-1992) and the size of Russia's military deployment (in 2002-2004)[16] and had also regard to the fact that "the "MRT" only survived during the period in question (2002-2004) by virtue of Russia's economic support, *inter alia*"[17]. The Court concluded that Russia was continuing to provide military, economic and political support to the Transdniestrian separatists so that it was found to have exercised during the period in question effective control and decisive influence over the "MRT" administration.[18] According to the Court, the impugned facts therefore fell within the jurisdiction of Russia, although the Court accepted that there was no evidence of any direct involvement of Russian agents in the action taken against the applicants' schools.[19] The Court specified:

> "106. One exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration (*Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 62, Series A no. 310; *Cyprus v. Turkey* [GC], no. 25781/94, § 76, ECHR 2001-IV, *Banković*, cited above, § 70; *Ilaşcu*, cited above, §§ 314-316; *Loizidou* (merits), cited above, § 52; *Al-Skeini*, cited above, § 138). Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions. The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out

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14 ***See more M. Milanović, 'Catan and Others'. EJIL: Talk!, 21 October 2012; B.Bowring (2014), 'Case commentary: Catan v Moldova and Russia: geopolitics and the right to education, and why "no person" is in fact a child'. International Justice 1 (9), pp. 44-59.***

15 *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04, 8252/05 and 18454/06, 19 October 2012 (extracts).

16 Ibid., §§ 118-119. The Court accepts that, by 2002 – 2004, the number of Russian military personnel stationed in Transdniestria had decreased significantly (see *Ilaşcu*, cited above, § 387) and was small in relation to the size of the territory.

17 Ibid., § 120.

18 Ibid., § 122.

19 Ibid., § 114.

in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights (*Cyprus v. Turkey*, cited above, §§ 76-77; *Al-Skeini*, cited above, § 138).

107. It is a question of fact whether a Contracting State exercises effective control over an area outside its own territory. In determining whether effective control exists, the Court will primarily have reference to the strength of the State's military presence in the area (see *Loizidou* (merits), cited above, §§ 16 and 56; ***Ilaşcu***, cited above, § 387). Other indicators may also be relevant, such as the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region (see ***Ilaşcu***, cited above, §§ 388-394; *Al-Skeini*, cited above, § 139). […]

114. […] the Court has also held that a State can exercise jurisdiction extra-territorially when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory (see paragraph 106 above). The Court accepts that there is no evidence of any direct involvement of Russian agents in the action taken against the applicants' schools. However, it is the applicants' submission that Russia had effective control over the "MRT" during the relevant period and the Court must establish whether or not this was the case. […]

121. In summary, therefore, the Russian Government have not persuaded the Court that the conclusions it reached in 2004 in the ***Ilaşcu*** judgment (cited above) were inaccurate. The "MRT" was established as a result of Russian military assistance. The continued Russian military and armaments presence in the region sent a strong signal, to the "MRT" leaders, the Moldovan Government and international observers, of Russia's continued military support for the separatists. In addition, the population were dependent on free or highly subsidised gas supplies, pensions and other financial aid from Russia.

122. The Court, therefore, maintains its findings in the ***Ilaşcu*** judgment (cited above), that during the period 2002-2004 the "MRT" was able to continue in existence, resisting Moldovan and international efforts to resolve the conflict and bring democracy and the rule of law to the region, only because of Russian military, economic and political support. In these circumstances, the "MRT"'s high level of dependency on Russian support provides a strong indication that Russia exercised effective control and decisive influence over the "MRT" administration during the period of the schools' crisis."

[…]

128. The Court's case-law on the application of the Convention set out above shows that the Convention organs have established already at an early stage that jurisdiction under Article 1 of the Convention is primarily territorial. However, ~~it is equally clear that~~ it is not always restricted to the national territory of the High Contracting Parties. Despite the attention given by the Court to defining and categorising in detail the exceptions to the principle that jurisdiction is primarily territorial, some unresolved issues of interpretation of that notion and its scope remain.

[…]

130. Some subsequent cases of the Court have ~~developed~~ ***broadened*** its application of the Convention extraterritorially as set out in *Banković*. In *Issa* the Court found that "Article 1 of the Convention cannot be interpreted so as to allow a State party to perpetrate violations of

the Convention on the territory of another State, which it could not perpetrate on its own territory"[20] and thereby indicated that the Convention could be applied outside the Convention legal space. In *Pad* the Court found that the respondent State could potentially be held liable in a case involving the death of persons possibly brought about by shots from a military helicopter on foreign territory and thus possibly in a situation concerning air strikes which had not been found to make the victims thereof fall within the respondent State's jurisdiction in *Banković*~~.~~ ***and thus in a clear departure from the Banković decision and despite striking resemblance of factual circumstances.***

[…]

132. In further applications including the cases of *Hirsi Jamaa*, *Hassan* and *Jaloud*, the Court, while relying on the principles as summarised in *Al-Skeini*, found the facts of the case to fall under the exception of State agent authority and control, thus again enlarging the scope of application of the Convention to further situations arising outside the respondent States' territory. The broad formulation of the principles set out in *Al-Skeini*, in respect of State agent authority and control, ~~case-law~~ means that it could be difficult for the respondent State to foresee the exact scope of its obligations under the Convention in respect of individual rights in a given situation. This is particularly so in the light of the development of the substantive rights under the Convention, which now also comprise positive and/or procedural obligations.

133. Several other judgments further developed the scope of the States' jurisdiction where they were found to have effective control of an area and in particular in cases where that control was found to be exercised not directly, but through a subordinate administration. In several cases concerning the existence, within the territory of a Contracting State, of an entity which is not recognised by the international community as a sovereign State, with the support of the respondent State, the Court had not only had regard to the strength of the State's military presence in the area. In *Ilascu* the Court did not require effective control, considering "decisive influence" to be a sufficient requirement for establishing jurisdiction. In *Catan*, even though no direct involvement of the agents of the respondent State was established,[21] the Court nevertheless concluded that the respondent State exercised "effective control and decisive influence" over the separatist administration, which was found to continue in existence "only because of Russian military, economic and political support".[22] Similarly, in *Chiragov*, the Court found not only that the respondent State's military support continued to be decisive for the continued control over the territories in question, but that the "Republic of Nagorno-Karabakh" (the "NKR") survived "by virtue of the military, political, financial and other support" given to it by Armenia.[23] No direct action by the respondent State in relation to the impugned act was thus found to be necessary in this group of cases in order for the acts to come within the respondent States' jurisdiction. Thus, the threshold for establishing jurisdiction in these cases seems to reduce the requirements of the effective control test[24]. Furthermore, the broad formulation of the elements necessary for the Court to conclude that a State had jurisdiction, as shown above, could make it difficult for States to foresee the exact scope of their obligations under the Convention.[25]

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[20] *Issa and Others v. Turkey*, no. 31821/96, § 71, 16 November 2004.
[21] See paragraph 123 above.
[22] *Catan and Others,* cited above*,* § 122.
[23] *Chiragov and Others v. Armenia* [GC], no. 13216/05, §§ 180, 185 and 186, 16 June 2015. See also paragraph 125 above.
[24] ***See more M. Milanović, 'Catan and Others'. EJIL: Talk!, 21 October 2012; B.Bowring (2014), 'Case commentary: Catan v Moldova and Russia: geopolitics and the right to education, and why "no person" is in fact a child'. International Justice 1 (9), pp. 44-59.***
[25] The Republic of Moldova does not share the assessment of the way the facts were presented in this paragraph regarding the *Ilascu* and *Catan* cases. The full comment is reproduced in document DH-SYSC-II(2019)R7.

134. In this category of cases, where a respondent State does not have direct territorial control, but only decisive influence over the administration of a breakaway territory, the consequences of a finding of jurisdiction are considerable. The respondent State is under the obligation to secure on such a territory the full range of Convention rights in the sense of an obligation to achieve the result required by the Convention, and not only as an obligation of means, that is, to do what is possible to achieve that result.[26] ***As was agreed by the CDDH in its meeting of 27-30 November 2018***[27] ~~T~~this category of cases may cause difficulties for the States at the stage of the execution of judgments. However, the unconditional character of the obligation to execute the Court's judgments under Article 46 of the Convention must be recalled. It has ***also*** been decided ***by the CDDH*** that this aspect relating to the execution of judgments will not be addressed as it goes beyond the scope of the Report on the interaction between the Convention and general international law and the analysis of the risk of fragmentation arising from diverging interpretations which are to be addressed in the present report.[28]

[…]

c. THE APPLICATION OF THE INTERNATIONAL LAW OF STATE RESPONSIBILITY BY THE EUROPEAN COURT OF HUMAN RIGHTS

[…]

142. For the purposes of the current consideration of the notion of "jurisdiction" in Article1 of the Convention, the primary issue of State responsibility that arises is that of "attribution". The ECHR does not contain any provision referring to criteria for the attribution of conduct to a High Contracting Party. There is thus no *lex specialis* in the Convention in relation to such attribution (indeed, issues of attribution are often examined as part of the consideration of "jurisdiction" for the purposes of Article 1). Therefore, the Court has on a number of occasions referred to ARSIWA under the heading of the applicable law.[29] ~~–~~***It must be noted that, according to the ILC General commentary to ARSIWA "the present articles are concerned with the whole field of State responsibility. Thus they are not limited to breaches of obligations of a bilateral character, e.g. under a bilateral treaty with another State. They apply to the whole field of the international obligations of States, whether the obligation is owed to one or several States, to an individual or group, or to the international community as a whole."***[30]

[…]

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[26] See Philippe Boillat, Execution of judgments: new paths, in: International and Comparative Law Research Center (ed.), Case-law of the European Court of Human Rights – Extraterritorial jurisdiction: Looking for solutions, 2018, pp. 63-67.

[27] ***Report of the 90th CDDH meeting (27–30 November 2018), CDDH(2018)R90, paragraph 19.***

[28] ~~[*Note by the Secretariat (to be deleted on the adoption of the Report): This passage has been added in order to reflect the guidance given by the CDDH in its meeting of 27-30 November 2018 on whether questions relating to the execution of judgments should be addressed in this chapter (see for the referral of this question to the CDDH DH-SYSC-II(2018)R4, § 12).]*~~ One delegation considered that problems for the States at the stage of the execution of judgments in cases concerning the extraterritorial application of the Convention are within the scope and should have been addressed in the Report. ~~[*Note by the Secretariat: see discussions in the CDDH in June 2019]*~~

[29] ~~It must be noted that, according to the Draft Articles on Responsibility of States for Internationally Wrongful Acts, General commentary, point (5) "the present articles are concerned with the whole field of State responsibility. Thus they are not limited to breaches of obligations of a bilateral character, e.g. under a bilateral treaty with another State. They apply to the whole field of the international obligations of States, whether the obligation is owed to one or several States, to an individual or group, or to the international community as a whole."~~

[30] ***Draft Articles on Responsibility of States for Internationally Wrongful Acts, General commentary, point (5)***

185. ***Apparent inconsistencies in the Court's interpretation of "jurisdiction" will result in unpredictability and uncertainty among the States as to how their actions might be qualified by the ECtHR. Providing legal certainty is central to the legitimacy of the ECtHR and the maintenance of its effectiveness and authority as an independent and competent judicial institution.*** In view of the foregoing, and in order to ~~preserve the effectiveness of the Convention system against risks~~ ***avoid a risk*** of fragmentation of the ~~European and~~ international legal ~~space~~ ***order, as well as*** in the ~~field~~ ***interest*** of ~~human rights protection~~, ***preserving the authority of the Court's decisions*** ~~it is important that~~ ***it would be desirable if*** the Court ~~gives detailed reasoning when applying the~~ ***more consistently applied relevant*** rules of general international law, ~~and in particular as to whether and how far it considers the~~ ***including those codified in*** ARSIWA ~~rules relevant and applicable~~ in cases concerning attribution of conduct to the respondent State before it.[31]

[…]

II. THE CHALLENGE OF THE INTERACTION BETWEEN THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND OTHER INTERNATIONAL HUMAN RIGHTS INSTRUMENTS TO WHICH THE COUNCIL OF EUROPE MEMBER STATES ARE PARTIES

[…]

326. As exemplified by the *Correia de Matos* case, the existence of parallel human rights protection mechanisms, normally a source of enrichment and enhancement of the universal protection of human rights, has also the potential of becoming a source of uncertainty for States parties on how to best fulfil their human rights commitments, not to mention for individuals as regards the exact scope of their rights, and a threat to the coherence of human rights law and the credibility of human rights institutions. ***As was stated by the CDDH in its report on the longer-term future of the ECHR, the existence of numerous European and international treaties relevant to the protection of human rights standards increases the risk of diverging interpretations of one and the same or interrelated (human rights) norm(s). This in turn may lead to conflicting obligations for States under various mechanisms of international law. It could undermine the credibility of the Convention mechanism if the Convention were to be interpreted in a manner inconsistent with States' commitments under other treaties[32].***

[…]

[31] The Russian delegation regrets the lack of substantive recommendations corresponding to the challenges identified, and proposes to highlight the need that the Court, in the interest of preserving its authority, more consistently applied relevant rules of general international law, including those codified in the ARSIWA (the full comment is reproduced in document DH-SYSC-II(2019)R7).

[32] ***Para 172.***

III. THE CHALLENGE OF THE INTERACTION BETWEEN THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE LEGAL ORDER OF THE EUROPEAN UNION AND OTHER REGIONAL ORGANISATIONS

[…]

~~423. However, should the Court of the EAEU continue to refer to the case-law of the ECtHR, it is necessary to ensure that the references are to the current case law. For example, with respect to the above-mentioned reference to the *Pellegrin* case it should be noted that the ECtHR's conclusions in that particular case concerning the applicability of Article 6 of the ECHR have been superseded by those in the case of *Vilho Eskelinen and Others v. Finland*[33].~~

[…]

CONCLUSION

[…]

427. Legal certainty as regards the applicable rules concerning the interpretation of the ECHR, and its relationship with other rules of international law, for example ~~on State responsibility or~~ international humanitarian law, ***as well as clarity and consistency in the application by the Court of general rules of international law on state responsibility*** is of great importance for the States Parties. As the ECtHR itself found on many occasions, as follows from Article 31 § 3 (c) of the 1969 Vienna Convention on the Law of Treaties, the ECHR cannot be interpreted in a vacuum and should as far as possible be interpreted in harmony with other rules of international law of which it forms part, including those relating to the international protection of human rights.[34]

~~[33] *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, 19 April 2007.~~

[34] The Russian delegation regrets that the conclusions of the report do not properly reflect the challenges and solutions identified, and proposes to highlight that clarity and consistency in the application by the Court of general rules of international law on state responsibility, is of great importance for the States Parties (the full comment is reproduced in document DH-SYSC-II(2019)R7).