



# CZECH REPUBLIC

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Permanent Mission of the Czech Republic to the United Nations

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General Assembly

**Agenda Item 81**

**Report of the ILC:  
Formation and Evidence of Customary International Law  
Protection of Environment in Relation to Armed Conflicts  
The Obligation to Extradite or Prosecute**

**Statement by**

**Ms. Petra Benešová**

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to the United Nations

New York, November 5, 2013

Mr. Chairman,

First of all, I would like to address the topic of Formation and Evidence of Customary International Law. The Czech Republic welcomes the International Law Commission's (hereinafter as the „Commission“) initial steps in discussing the formation of customary international law. We would like to commend the Special Rapporteur, Sir Michael Wood, on his first report, outlining the key questions in this field. The Czech Republic considers the formation and evidence of customary international law an important topic at the very heart of international law. The clarification of several issues has a great potential to contribute to the effectiveness of international law and its further development. The Czech Republic also commends the Memorandum prepared by the Secretariat identifying the elements in the previous work of the Commission that could be particularly relevant to the topic.

The Czech Republic agrees with the general scope of the topic delimited by the Special Rapporteur. We would like to emphasize that even if the title was changed into “Identification of customary international law”, we understand that the proposed work of the Commission would remain focused both on the examination of the process of formation of the customary rules and the material evidence of their existence. The two elements are inherently interlinked and serve as an essential means for tracing the emergence of the customary norm.

In addition, the Czech Republic supports the “two-elements” approach based on the recognition of the indispensability of both State practice and *opinio juris* for the creation of an international custom although it acknowledges the varying balance between the two elements. In this respect we stress the temporal aspect of such relation and the potential prevalence of one element over another. The examination of the key issues such as whether an *opinio juris* may anticipate State practice, the temporal or numerical delimitation of repetitiveness of acts with a view of consolidation of a customary norm or the concept of an “instant custom” would help to clarify some basic features of international custom as well as shed light on claims on international scene.

The Czech Republic suggests that the flexibility of the customary process is taken into account by the Commission. Accordingly, it is advisable to evade an overly prescriptive approach in the work on this topic. The outcome of the work of the Commission should be of an essentially practical nature.

The Czech Republic will also follow, with great interest, the topic Protection of the environment in relation to armed conflicts. We share Special Rapporteur's view on relevance of this topic for contemporary international law as well as the proposed methodology of temporal perspective. In this regard, the draft articles would be an appropriate outcome.

Mr. Chairman,

Finally, the Czech Republic took note of this year's report of the Working Group on the obligation to extradite or prosecute which contains certain problematic conclusions. In particular, para 28 does not adequately reflect position of States on the draft article 13 of the draft articles on the expulsion of aliens adopted by the Commission in the first reading in 2012. In this context, the Czech Republic regrets that there has been no substantial progress on this topic since 2005 and, for this reason, we recommend the Commission not to continue its work on this topic and focus its effort on other issues on its agenda. In spite of this, the Czech Republic puts great emphasis on the inclusion and implementation of the treaty clauses on the obligation to extradite or prosecute in the relevant international law instruments and is ready to work on this issue in the relevant international fora.

Thank you, Mr. Chairman.