CHECK AGAINST DELIVERY!

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Report of the International Law Commission on the work of its 63rd and 65th session

Intervention by

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Mr. Chairman,

First of all, allow me to express the Hungary's appreciation for the achievements of the Commission in its sixty-fifth session. We would also like to thank Mr. Bernd Niehaus for the eloquent leadership of the Commission as Chairman during the session, as well as the work of the Special Rapporteurs for their able guidance in the topics discussed.

The Hungarian delegation has noted with satisfaction that the Commission has advanced in its work in the past year. On the other hand, we also wish to underline the importance of finalising those issues which have been on the Commission's agenda for too long with moderate success. It would be advisable to suspend the work on the topics where substantial progress has not been reached in the last couple of years, enabling thereby the Commission to introduce new topics to its agenda where new rules are needed or the current rules need to be amended to adjust to changing realities.

Mr. Chairman,

Turning to the specific Chapters of the report first I would like to address **Chapter IV on Subsequent agreements and subsequent practice in relation to the interpretation of treaties.**

My delegation supports the Commission's decision to include a separate conclusion on the interpretation of treaty terms as capable of evolving over time which properly reflects the fact that the changes in the legal environment or in other areas may affect the implementation of an international treaty. Therefore, it is vital to provide the possibility - and not the obligation - to the states parties of a treaty to give a term used in the treaty a meaning which is capable of evolving over time by subsequent agreements or subsequent practice.

My delegation also finds that the Commission by providing the definition of "*subsequent agreement*" and "*subsequent practice*" made the first fundamental steps in the consideration of this topic. In connection with the use of subsequent practice by one or more, but not all parties to a treaty as a supplementary means of interpretation under article 32 of the Vienna Convention, however, it also should be reiterated that the view or practice of one state does not make international law and it cannot be forced on the other states parties of the treaty.

The Hungarian delegation agrees with the Commission's assessment that the terms subsequent agreement or practice also refer to cases which may take place between the moment when the text of a treaty has been established as definite and the entry into force of that treaty. In this context it also should be highlighted that the term "*are made in connection with the conclusion of the treaty*" as used in paragraph (2) of article 31 of the Vienna Convention should certainly be understood as including agreements which are made in a close historical proximity with the conclusion of the treaty. Hungary is looking forward to the Commission`s upcoming discussion on the exact interpretation of the relevant articles of the Vienna Convention, for instance under what circumstances an "*agreement of the parties regarding the interpretation of a treaty*" is actually "*established*".

Mr. Chairman,

Turning to **Chapter V** of the Report on the **Immunity of state officials from foreign criminal jurisdiction** we are pleased to see that the Commission has found a way to properly address the scope of the draft articles. The Commission rightfully narrowed the scope of immunity from foreign criminal jurisdiction to the point that it can only be enjoyed by those persons who represent or act on behalf of a State by virtue of their office, and the type of jurisdiction is affected by immunity to criminal jurisdiction. The wording of the draft articles refer to the immunity from the "*foreign*" criminal jurisdiction, which also means that the rules governing immunity before international criminal tribunals are not to be affected by the content of the draft articles. That is the appropriate approach because the draft articles cannot affect the various types of existing international obligations imposed on States to cooperate with international criminal tribunals.

On **Chapter VI on the Protection of Persons in the Event of Disasters** I would like to reiterate that in our view the event of disaster is primarily a national issue, and providing protection is mainly the obligation of the Government of the affected state, whereas the Government and the competent ministries, also their subordinate organizations together with the citizens are obligated to participate in the protection and restoration. However, the Hungarian delegation also supports the idea to include the duty to provide assistance when requested, but the wording has to be careful. It might be wise to determine the obligation as a strong recommendation or an example to follow, with a phrasing that takes into consideration the capacities of the State from which the assistance is requested. In this regard Hungary welcomes draft Article 5bis, which further clarifies Article 5 on the duty to cooperate. In addition Hungary is delighted to see that Article 5 requires states to cooperate not just among themselves but with the relevant international actors as well.

Hungary does understand the delicate legal situation concerning this issue; since it is very hard to find the right balance between the need to safeguard the national sovereignty of the affected States and the need for international cooperation regarding the protection of persons in the event of disasters. Therefore, to find the appropriate form for the draft articles will be the most delicate problem the Commission will face in connection with the future of this topic. Hungary will approach any proposal in this regard with an open mind.

Mr. Chairman,

Regarding **Chapter VII on Formation and evidence of customary international law** my delegation agrees with those members of the Commission who suggested that *jus cogens* should be dealt with as part of this topic, for the reason that there is a close link between the two concepts which merit further studying.

Addressing the Commission's question on this issue, I would like to highlight that paragraph (2) of Article Q of the Fundamental Law of Hungry clearly stipulates that "*Hungary shall ensure harmony between international law and Hungarian law in order to fulfill its obligations under international law*". Moreover paragraph (3) of the same article states that "*Hungary shall accept the generally recognized rules of international law*". As to

Hungary's practice relating to the formation of customary international law and the types of evidence suitable for establishing such law in legislative and juridical proceedings the situation, we can state the following. In the cases where the content of customary international law is in question before the courts or other authorities they shall request the advice of the respective ministries (i.e. the Ministry for Foreign Affairs and the Ministry of Administration and Justice) on the relevant rules of customary international law. The courts and authorities are under the obligation to follow the determination of the ministries in this regard.

Turning to **Chapter VIII** on the **Provisional application of treaties**, the Commission requested States to provide information on their national law and practice concerning the provisional application of treaties in relation to:

(a) the decision to provisionally apply a treaty;
(b) the termination of such provisional application; and
(c) the legal effects of provisional application.

In Hungary the relevant domestic law, namely Act 50 of 2005 on the conclusion of international treaties, contains detailed rules on the provisional application of international treaties. According to these rules the provisional application has to be decided by the same entity which is authorised to give Hungary's consent to be bound by a treaty. In Hungary only the Parliament and the Government has the power to express this consent. The Parliament gives its authorisation in the form of an act and the Government in the form of a government decree. In these very same laws, if necessary, the Parliament or the Government can decide on the provisional application of the treaty as well.

In case the termination of such a provisional application is necessary it is done in the same manner, namely in the respective act or decree. Since the respective laws in which the Parliament or Government agrees to the provisional application of a treaty also contain the text of the international treaty, in the Hungarian legal system the provisional application of a treaty has the same effect as the entry into force of the said treaty, and therefore Hungary has to comply with the articles of the provisionally applied treaty.

Hungary will also provide more detailed information on this subject matter in writing with examples by 31 January 2014 as requested by the Commission.

Concerning **Chapter IX on Protection of the environment in relation to armed conflicts** we agree with the approach taken by the Special Rapporteur to address the topic through a temporal perspective - rather than from the perspective of various areas of international law - which will make the topic more manageable. My delegation also supports the proposal to focus the work on Phase I (obligations to a potential armed conflict), and Phase III (post-conflict measures).

Regarding **Chapter X on the Obligation to extradite or prosecute**, we believe that after the International Court of Justice has rendered judgment on the 20 July 2012 on questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal) case the Commission should finish its work on the topic because presently the Commission cannot make more contribution to this issue than it has done already.

Thank you for your attention.