



**S L O V A K I A**

**STATEMENT**

**by**

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*(Check against delivery)*

Mr. Chairman,

Allow me at the outset to congratulate the International Law Commission and its Members for the Report that has been presented to us. In particular, I would like to express our delegation's gratitude to the President of the ILC, Mr. Narinder Singh for his able leadership during the 67<sup>th</sup> session of the Commission, as well as for the presentation of the report to the Sixth Committee. Our appreciation goes also to the other members of the bureau and the members of the drafting committee.

In my intervention I shall address the topics: Most-Favoured-Nation Clause, Protection of the atmosphere and give some observation on the future topic.

Mr. Chariman,

We note with utmost satisfaction that the ILC completed its work on the topic "Most-Favored-Nation clause" and we join other delegations in congratulating the Study Group and its chairman Professor Donald McRae for the outcome. The Final report of the Study Group is a valuable addition to earlier work of the Commission on this topic, namely Draft Articles on MFN clauses that the Commission adopted in 1978. Despite the fact that at the time the Draft articles did not result in adoption of a legal instrument, over the years they have provided useful tool for interpretation of MFN clauses and their application, as well as an important point of reference for arbitral tribunals.

We were convinced by the reasons for which the Study Group, already at an earlier stage of its work, decided to not embark on amending the Draft articles but rather to analyze various questions of interpretation of MFN clauses, in particular concerning the terms actually used in bilateral investment treaties, for which the Draft articles provide little or no guidance. Among them issues arising in connection with application of MFN clauses to dispute settlement provisions. The Study Group successfully identified main types of interpretation problems and analyzed tendencies towards consolidation of this interpretation emerging from recent arbitral practice. The guidance for interpretative techniques contained in Part IV of the Final report is in particular helpful, despite the fact that, as rightly highlighted in the report, there is no basis for

concluding that there will be a single interpretation of a MFN provision applicable across all investment agreements and that MFN clauses of each treaty have to be interpreted independently, in accordance with articles 31 and 32 of the Vienna Convention on the Law of Treaties.

Mr. Chairman,

Allow me to turn now to the topic of the Protection of the atmosphere. We take due note of the Chapter V of the Commission's report, the discussion during the 67<sup>th</sup> session of the ILC based on the second report submitted by the Special Rapporteur Shinya Murase, as well as the provisional adoption of four preambular paragraphs and Guidelines 1, 2 and 5 together with commentaries.

Our government attaches great importance to the protection of the atmosphere as an important part of what makes the Earth livable, as well as to the preventing the further degradation of the atmosphere. We consider it very useful, that the ILC held the dialog with the scientists, however, it shall be noted, that such dialogs might sometimes contribute to misleading conclusions, especially in case of topics having many important elements defined rather by physics or other natural sciences, than by the law.

The Special Rapporteur and the ILC have chosen an approach to the topic based on the atmosphere as the object of protection, what seems to us quite ambiguous and without necessary foundation in current international law. The protection of the atmosphere shall be considered rather as an aim or purpose of a legal regulation than as the object of the regulation itself. This is in our view one of the reasons, why the consideration of the topic so far is accompanied by a lively discussion, by presenting divergent views and particularly, it seems very difficult to develop the topic beyond stating or defining the obvious and putting down statements without legal implications.

In this line we agree that the draft Guidelines 3 and 4 as presented by the Special Rapporteur have not been adopted yet, but deferred for further consideration. Suggested principles – common concern of humankind and the general obligation of states to protect the atmosphere were so far not based on convincing legal arguments, but more or less on general feelings of responsibility towards the protection of the atmosphere. We hope that during the next

sessions, the ILC will have the opportunity to rethink the concept towards a more acceptable, more concrete principle proposals that will be based on sound legal formulations taking into account current status of the law relating to the complex and important question of the protection of the atmosphere.

Mr. Chairman,

Finally, let me express our full support for the decision to include the topic *jus cogens* in the programme of work of the ILC and, at the same time, to commend the Commission for the appointment of Dire Tladi as the Special Rapporteur on this topic. We are convinced that under his leadership the ILC might make a significant progress in this rather difficult topic.

After the ILC has been dealing with sources of international law, particularly the Law of Treaties, subsequent agreements and practice in the context of treaty interpretation, and most recently deals with the determination of customary international law, the Commission is facing a new difficult mission. The contours and particularly the legal effects of *jus cogens* remain poorly defined, which opens questions about their implications. We would like to stress however, that in approaching the topic, the Special Rapporteur and the ILC should exercise utmost caution when deciding on the scope and direction of the future work.

We are looking forward for the discussion on the topic, which will be clearly one of the most challenging topics on the agenda of the ILC during the next quinquennium.

I thank you, Mr. Chairman.