



S L O V A K I A

STATEMENT

by

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(Check against delivery)

Mr. Chairman,

In my today's intervention I will address Chapters VI and VII of the ILC Report, i.e. the topics Identification of customary international law and Crimes against humanity. We would like once again thank the Chairman of the International Law Commission for the introduction of the relevant chapters of the report to the Sixth Committee.

Our delegation took note with appreciation of the work of the Commission done during the 67th session on the topic **Identification of customary international law**. Our special thanks go to the Special Rapporteur Sir Michael Wood for his third report and new draft conclusions he had presented before the Commission. We welcome the provisional adoption of set of draft conclusions 1 to 16 by the Drafting Committee at this and previous year's sessions. I would like to address some specific issues with regard to several draft conclusions and their elements that have been discussed by the Commission.

We strongly concur with the two-element approach chosen by the Special Rapporteur. This seems to be the correct one. Similarly, we fully agree with the form chosen for the final outcome, i.e. to prepare set of simple, but clear conclusions that will serve practitioners (judges, arbitrators or lawyers advising on international law) in identifying the rules of customary international law. The aim of the topic is to assist in determination of the existence or not of a rule of customary international law and its content.

With regard to the interrelationship of the two elements: general practice and *opinio juris*, we agree with the view that both elements are indispensable for the identification of the rule of customary international law and that extensive presence of one element cannot compensate for the lack of the other, as well as with the point that each element have to be separately ascertained.

With regard to inaction as practice or evidence of *opinio juris*, we concur with the view that there is a practical difficulty of qualifying inaction for this purpose. The criteria for inaction set out by

the special rapporteur however, may serve as evidence of acceptance as law and also in our view it would improve the relevant draft conclusions, if the essence of it be included in the relevant paragraph.

We welcome the draft conclusion on the role of treaties in identifying the rules of customary international law. This issue is indeed most pertinent. Number of international treaties, including those based on the work of the ILC, as well as those that are not yet in force, or even expected never enter into force, serve as a relevant and important evidence of customary rules.

On the other hand, it is clear that resolutions of international organizations and conferences cannot be *by them-self* regarded as an evidence of customary rules. However, in some specific and particular situations, sufficiently supported by practice and *opinio juris*, such resolutions may in fact serve as a necessary and useful evidence of rules of customary international law. Case by case consideration of relevant resolutions and their content seems to be the only right approach. We note with appreciation that this issue is properly reflected in the draft conclusion 13.

It shall be generally accepted that judicial decisions and writings or teaching of prominent jurists frequently serve as subsidiary means for identification of rules of customary international law. However, it seems indeed appropriate to make a clear distinction between judicial decisions and writings, taking into account their different nature, procedure and effect on the evidence. Therefore we support splitting the two issues, currently contained in the draft conclusion, into two separate draft conclusions, as has been already suggested by the Special Rapporteur. We also share the view expressed by the Special Rapporteur that although the separate and dissenting opinions attached to international tribunals' decisions do not formally form part of the decisions, they might be of high relevance in identifying customary international law and may also contain useful evidence of such rules.

We recognize “particular custom” being an exemption to the general application of rules of customary international law. We therefore support the wording suggested by the Special Rapporteur in draft conclusion 15. Taking into account nature of the particular custom and

limited number of states that are bound by such rule, giving necessary evidence of practice and *opinio juris* may seem more difficult than in case of general customary international law rules. We understand that in theory particular custom is able to be created also among states from different regions, but it is in our view significant to stress that a geographical nexus may serve as an important element to unequivocally establish the existence of a particular custom.

We consider further the draft conclusion 16 on persistent objector an important part of the future outcome of the ILC on this topic. We support the inclusion of this concept into draft conclusions and are convinced that the principle is sufficiently supported in current international law.

Finally, we are delighted to notice, that the Special Rapporteur plans that the draft conclusions with commentaries be adopted in the first reading during the next session in 2016. In this context we underline the importance of the commentaries to the draft conclusions for the application, use and interpretation of the future conclusions. Therefore we praise the suggestion of the Special Rapporteur to devote sufficient time to their formulation, consideration and adoption.

Mr. Chairman,

Allow me now to turn to the Chapter VII of the Commission's report dealing with the consideration of the topic **Crimes against humanity**. We would like to commend the Special Rapporteur Sean Murphy for his first report on the topic, and express our overall satisfaction on his approach to the topic and the direction he gave to consideration of the future outcome. It is worthy to notice that decision to handle the topic with a vision to elaborate a convention on prevention and punishment of crimes against humanity from the very outset of the consideration of the topic, was the right and wise decision. Thinking in the scope of a future convention is the only viable option for creating an effective implementation of the draft articles as an outcome of the consideration of the topic.

We note with satisfaction that the ILC was able to provisionally adopt articles 1 to 4 together with extensive commentaries thereto, which are in fact the key provisions of the future

international legal instrument, including the scope of the article, definition provisions and the obligation for prevention of crimes against humanity.

With regard to the definitions, our delegation is pleased that they fully reflect the definition of crimes against humanity contained in Article 7 of the Rome Statute, which is generally considered as reflecting the customary international law.

We fully support the inclusion of an article on obligation of prevention, as not only is this a long-standing practice in similar multilateral conventions, but primarily the focus on the effective prevention of crimes against humanity is the paramount purpose of a new legal instrument.

In closing my intervention, let me express our full support to the Special Rapporteur in his endeavor and to wish him and the Commission every success in early finalizing the topic.

Thank you, Mr. Chairman.