



SLOVENIA

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STATEMENT

BY

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Report of the International Law Commission on the work of its sixty-seventh session: Chapter IX: Protection of the environment in relation to armed conflicts, Chapter X: Immunity of State officials from foreign criminal jurisdiction, Chapter XI: Provisional application of treaties

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Mr Chairman,

Slovenia is honoured to address the Sixth Committee regarding the work of the International Law Commission on the topics *Protection of the environment in relation to armed conflicts*, *Immunity of State officials from foreign criminal jurisdiction* and *Provisional application of treaties*.

As to the topic Protection of the environment in relation to armed conflicts, my delegation would like to commend the Special Rapporteur on her second report.

Slovenia recognises the destructive impact of armed conflicts on the environment and therefore supports the efforts of the Special Rapporteur and the Commission to identify common principles for the protection of the environment before, during or after armed conflict. In view of the nature of the topic, which inherently relates to existing rules on armed conflict, Slovenia is aware of the need to carefully consider this interrelatedness. It is equally essential to examine the adequacy of the rules of international environmental law in the context of armed conflict.

Regarding the scope of this topic, Slovenia believes that current work should cover both international and non-international armed conflicts. Given that non-international armed conflicts continue to be the prevalent form, it is desirable that they be incorporated into the current work, while paying due attention to the differences between the two types of conflict.

With respect to the first temporal phase, which concerns the period before an armed conflict, Slovenia would welcome the inclusion of other preventative aspects in the draft principles, including the importance of national legislation on the protection of the environment, the training of armed forces and the dissemination of instructive materials.

Furthermore, Slovenia supports the view that additional consideration of draft principle 1 would be welcome with regard to the description of the environment as being "civilian in nature". Although this depiction is intended to characterise the environment as distinct from military objectives, it needs further clarification to avoid any ambiguity.

Concerning draft principle 2, Slovenia appreciates the aspiration to create strong protection of the environment in the context of armed conflict. However, while fully supporting this approach, we recognise that it is important to find the right balance, taking into account *lex lata* and, where appropriate, *lex ferenda* with respect to the law on armed conflict and protection of the environment, as well as the practical characteristics of the environment in the context of an armed conflict that distinguish it from civilians and civilian objects. In this sense, Slovenia sides with those calling for a cautious approach to the transposing to the protection of the environment the provisions of the law of armed conflict on the protection of civilians or civilian objects.

Slovenia looks forward to following the work on this important topic, and would welcome the addition of comments to the draft principles as the work on the topic progresses.

Turning to Chapter X: Immunity of State officials from foreign criminal jurisdiction, Slovenia welcomes the Special Rapporteur's focus in his fourth report on the remaining consideration of the material scope, i.e. "an act performed in an official capacity", and temporal scope. As the present report is a continuation of the analysis from earlier sessions, my delegation recalls its previous comments on this topic.

With regard to draft article 2 (f) containing a definition of an "act performed in an official capacity", Slovenia agrees that the wording would need redrafting in order to avoid the implication that any act performed in an official capacity is considered as a crime. The draft article deals with one of the key aspects of the topic. As such, it requires a thorough examination and clear understanding, which is why a set of corresponding commentaries would prove useful.

Having previously called for clarification of the relationship between official acts in the context of immunity and the rules on the attribution of state responsibility, Slovenia welcomes the fact that the Special Rapporteur addressed this aspect, while noting that the discussion within the Commission might call for additional explanation. Referring to the Commission's discussion on whether the topic should also cover the actions of persons acting under governmental direction and control, Slovenia proposes a restrictive approach regarding the possibility of extending immunities to a broader category of persons.

We note that the most challenging aspects of the topic, namely limits and exceptions to immunity, immunity *ratione materiae* in particular, will be addressed by the Special Rapporteur in her next report. In this context, Slovenia would like to reiterate its view that, while the immunity of state officials from foreign criminal jurisdiction is based on the principles of the sovereign equality of states, non-intervention and the interest of states in maintaining friendly relations, it should also be addressed against the background of the growing prominence of legal humanism and the fight against impunity, in particular through the prism of the progressive development of international law and developments in international criminal law. As a member of the International Criminal Court, Slovenia underlines the need for the Commission's future work to remain consistent with the regime under the Rome Statute.

Let me now address Chapter XI: Provisional application of treaties. First, we note with pleasure the Special Rapporteur's proposal in his third report and the support by some Commission members to consider in his further reports the provisional application in relation to the succession of states in relation to treaties, which Slovenia proposed at the last two sessions of this Committee. We continue to believe that it is important for the Commission to analyse provisional application comprehensively in order to make this exercise as useful as possible for states in their treaty relations.

With respect to the substance of the Commission's consideration of this topic, we agree with the Special Rapporteur on the need to analyse further the relationship between Article 25 VCLT and its other provisions. In this respect, it might be useful to consider the applicability of the VCLT regime for unilateral termination, i.e. denunciation, to the termination of provisional application, including reasons for denunciation and its consequences. With regard to the termination of provisional application, Article 18 would, in our view, require further analysis to the extent that it relates to the same period before the entry into force of a treaty, but differentiates between two manners of termination, depending on whether consent to be bound has been expressed or not. This and other comparisons with other relevant VCLT provisions could also clarify the interpretation of Article 25, as well as providing guidance as to whether and to what extent Article 25 is *lex specialis* in relation to them.

In conclusion, Slovenia welcomes the inclusion of draft guidelines in the present report, but reserves substantive comments for when they are at a more advanced stage of consideration

by the Commission. In this regard, we believe it would be useful for the purpose of commenting before this Committee if the Commission added its comments to each guideline, making it possible to understand and comment on the underlying reasoning for them.

Thank you.