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REPORT OF THE INTERNATIONAL LAW COMMISSION
CRIMES AGAINST HUMANITY
PROTECTION OF THE ATMOSPHERE
IUS COGENS

Statement by

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Mr, Chairman,

In accordance with the work programme of the Sixth Committee, the Czech Republic will address the three topics covered by chapters VII, VIII and IX of the Commission's report. In the oral presentation, I will focus on selected salient aspects of the three topics included in this cluster; the whole statement will be available in writing.

As far as the topic "**Crimes against humanity**" is concerned, the Czech Republic welcomes the next set of draft articles on the topic "Crimes against humanity", provisionally adopted by the Commission, and would like to express its appreciation to the Commission and the Special Rapporteur, Professor Sean D. Murphy, for their outstanding contribution to this issue. In our opinion, the provisions adopted, dealing with the criminalization under national law, investigation, obligation *aut dedere aut iudicare* and fair treatment of the alleged offender, in principle appropriately reflect and build upon current international law framework, including the Rome Statute of the International Criminal Court and a number of other relevant criminal law treaties.

Concerning draft article 5, we note that the Commission decided to include, in its paragraph 7, a provision on liability of legal persons for crimes against humanity. We appreciate that the wording of this paragraph provides States with a considerable flexibility in deciding whether to adopt such a measure and, if so, to shape these measures in accordance with their national law. In principle, we support the idea that legal persons should be liable for commission of crimes against humanity. On the other hand, we are aware of the fact that several relevant conventions in the area of international criminal law, including the Rome Statute, do not provide for any liability of legal persons. Therefore, we suggest that the Commission could study this issue in more detail, taking into account the specific context of crimes against humanity, including the organizational policy element contained in the definition of these crimes and different interpretations given to it.

As regards the draft article 9 on the obligation aut dedere aut iudicare, we note that the text of the provision is based on the so-called "Hague formula" after the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft. As stated by the International Court of Justice in Belgium v. Senegal case, cited in the commentary, the provisions of the "Hague formula" create elements of a single conventional mechanism aimed at preventing perpetrators from going unpunished, by ensuring that they cannot find refuge in any State Party. In addition, we appreciate that the draft article expressly envisages that the obligation to extradite or prosecute would be satisfied also by the surrender to competent international criminal tribunal.

Finally, we support the inclusion of draft article 10 in the text and appreciate the emphasis put on fair treatment, including a fair trial and full protection of human rights of the alleged offender.

Mr. Chairman,

The "**Protection of the atmosphere**" is a serious problem and challenge to the mankind which requires primarily understanding of complex scientific issues and political wisdom and courage to address the threats that current and future generations are facing. While we agree that the problem has also its international legal ramifications, currently, international legal aspects of this issue seem to be rather a corollary than the hard core of the

problem. We follow the work of the Commission on the topic “Protection of the Atmosphere” from this perspective.

We commend the Special Rapporteur, Professor Shinya Murase, for his commitment and guidance to the Commission. His third report focused on several important issues, including the obligations of States concerning prevention of atmospheric pollution, mitigation of atmospheric degradation, due diligence and environmental impact assessment. Questions concerning sustainable and equitable utilization of the atmosphere, as well as the legal limits on certain activities aimed at intentional modification of the atmosphere add yet another, new dimension to this topic. We have to reflect deeper on this before we make any comments.

Equally ambitious seems to be Special Rapporteur’s intention to deal with the question of the interrelationship between what he qualifies as the „law of the atmosphere“ and the law of the sea, international trade and investment law and international human rights law. Such a broadening of the topic, however interesting from the academic point of view it may be, moves it even further from what is, as we strongly believe, the primary purpose of the Commission, namely progressive development of international law and its codification.

We note a set of draft guidelines 1 – 8 as well as four preamble paragraphs adopted so far, including commentaries thereto that assist in better understanding of the guidelines. We reserve our position on their content for a later stage. However, as a preliminary observation, we wonder, how the concepts underlying guidelines 3 – 7, which have been developed primarily for the purpose of transboundary impacts of harmful activities, can properly operate on global scale, and in particular in relation to the atmosphere which embraces the Earth as a whole.

In the case of a serious damage caused to a neighboring State or even the damage on high seas, such damage can be instantly identified, located and objectively assessed. In the atmosphere, due to its properties, namely the transport and dispersion of polluting and degrading substances in the atmosphere (as recognized in preamble para 2), even extremely harmful activity within the jurisdiction of one State, taken in isolation, does not cause immediately significant damage to the atmosphere as a whole. It is rather a cumulative effect of harmful activities, irrespective of the degree of their adverse effects „ [...] which cause[s] significant adverse impact on the atmosphere in terms of atmospheric pollution or atmospheric degradation“ (quoting guideline 4). Accordingly a question arises, what is the threshold of the „significant adverse impact“. In its future work on this topic the Commission should therefore further analyze also this question.

Mr. Chairman,

The Czech Republic would like to thank the Special Rapporteur, Professor Dire D. Tladi, for his First report on the topic “*Ius cogens*”. We took note of Commission’s debate under this topic. It seems, both from the report and the debate, that views on many questions were heterogeneous and that there is a lack of clarity about the overall orientation and goal of Commission’s work on this topic.

Since we regard the topic *Ius cogens* as very relevant for the current stage of development of international law, we would like to express some remarks on this year’s discussions of the Commission.

We are in agreement with the Commission on the methodological approach. The work of the Commission on this topic should be based on both State and judicial practice, and

supplemented by scholarly writings. In our opinion, the analytical study should be based on the definitions contained in the Vienna Convention on the Law of Treaties (mainly Art. 53 and Art. 64). We are quite skeptical about providing any list of *ius cogens* norms. On the other hand, the Commission, together with the Secretariat, could gather, as part of consideration of this topic, relevant information on the use of the concept of *ius cogens* in the recent practice of States and international courts.

In our opinion, *ius cogens* norms are exemptions to other rules of international law. They protect fundamental values of international community and are universally applicable. We are not convinced about the normative possibility of existence of regional *ius cogens*; as mentioned in the Commission's discussion, it seems that such a possibility, by definition, contradicts the universal character of *ius cogens* norms. We take note of the Special Rapporteur's intention to include this question to the future report and reserve our further comments on this issue for next year's debate.

Regarding the proposed draft conclusions, the Czech Republic took note of Drafting Committee's inconclusive debate and is ready to comment on it when it will be finally adopted.

Thank you, Mr. Chairman.