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Chapter VII - Crimes against Humanity

Chapter VIII – Protection of the atmosphere

Chapter IX – Jus Cogens

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Chapter VII - Crimes against Humanity

The Romanian delegation would like to express its gratitude to the International Law Commission for the work on the topic of "*crimes against humanity*", which resulted in the provisional adoption of six new articles, and to its Special Rapporteur, Mr. Sean D. Murphy, for a very detailed report on the subject. We also welcome the memorandum elaborated by the Secretariat on treaty-based monitoring mechanisms, which we consider helpful in the future work of the Commission on this topic.

Turning to the draft articles provisionally adopted at this session of the Commission, my delegation supports the approach of the Commission of not departing from the relevant provisions of relevant international conventions and statutes in the field, including the Rome Statute of the International Criminal Court (as reflected *paragraph 3 of draft article 5*, which has a wording similar to article 28 of the ICC Statute).

We favor the inclusion of a provision which draws attention to the gravity of the offences within the scope of draft articles and which requires the imposition of appropriate penalties under criminal legislation. We are also very much in favor of the non-application of any statute of limitation for these offences as included in para. 5 of draft article 5. Romania has already taken such a policy decision in its Criminal Code.

Regarding the establishment of national jurisdiction, *paragraph 1 of draft article 6* establishes three forms of national jurisdiction, based on the principles of territoriality, active personality and passive personality.

Taking into account the gravity of these offences and the importance of using all tools to tackle them efficiently, Romania supports the inclusion of a paragraph which leaves open the possibility for a state to establish other jurisdictional grounds upon which to hold an alleged offender accountable, in accordance with national law. We see merits in having as wide as possible jurisdiction over these offences in order not to live room for cases of impunity. In our view, the active personality principle should be strengthened in cases of the offence committed by a stateless person residing on the territory of that State in order to have a similar standard of sanctioning as to a citizen of that state (considering that from a legal point of view, a stateless person has, more or less, similar rights and obligations in the residing state as a citizen of that state).

With respect to *draft article 7*, the Romanian delegation supports the approach of the Commission to adopt a wording similar to article 12 of *the Convention against Torture*.

Draft article 9 is one of particular importance and Romania shares the view that *the Hague formula*, which had already been incorporated into many international treaties, seems to be the most appropriate to be included in the formulation of this draft article.

We would also like to express our support for *draft article 10*, as it underlines the necessity of providing the alleged offender with the necessary protection during the proceedings: fair treatment (including a fair trial), full protection of the rights (including human rights law) and the right to communicate with his/her state of nationality or other relevant state, should the case be.

Having said that, I would emphasise that Romania will pay to consideration to the future work of the Commission on this very topic which we deem of particular importance for consolidating the international and national legal framework for combating the most serious crimes and fighting impunity.

Chapter VIII – Protection of the atmosphere

We are grateful for the impressive analysis undertaken by the rapporteur, Mr. Shinya Murase, which is evident from the three reports he submitted, as well as for the draft guidelines and commentaries adopted by the Commission. The guidelines and their commentaries deal with some of the most important issues relevant to the protection of the atmosphere. They are also a testimony to the skill needed to respect the limitations of this topic.

The clear calendar proposed by the rapporteur is very useful in preparing the background information for this topic.

The guidelines and their commentaries, as provisionally adopted, are a proof of the difficulties encountered when respecting the limitations of the topic.

Guideline 3 for example, seems to be worded so as to avoid mentioning the precautionary principles. The result is, however, difficult to understand and, even more, difficult to apply. We therefore suggest to replace ‘exercising due diligence in taking appropriate measures’ with text similar to the one used in the commentary to Guideline 4. States should put in place the necessary legislative, regulatory and other measures to prevent, reduce and control atmospheric pollution and atmospheric degradation.

In respect of Guideline 4, we would like to draw the attention to the fact that while many activities might not have, individually, a significant adverse impact on the atmosphere, their cumulative impact can be significant.

Finally, we strongly suggest reviewing Guideline 7. While we are in full agreement that this matter should be dealt with in the guidelines, we believe that the current wording could be greatly enhanced as it induces the idea that measures of the nature envisaged in the draft guideline are generally permissible, whereas this is not necessarily the case (see, for instance the restrictions on the use of geo-engineering where this impacts on biodiversity). At the same time we see the need of a more forceful language in this guideline rather than a simple call for “prudence and caution” with regard to activities aimed at intentional modification of the

atmosphere. These are activities with highly important consequences which could have a significant impact on the quality of the atmosphere.

Chapter IX – Jus Cogens

Romania welcomes the work of the International Law Commission on the topic of *Jus cogens*, and would like to thank Special Rapporteur, Mr. Dire Tladi, for his ample research on the subject, reflected in this first report, which represents an excellent point of departure for examining this challenging topic.

On a general note, the Romanian delegation would favour an approach that does not depart from the relevant provisions of the Vienna Convention on the Law of the Treaties.

We share the view that the draft conclusions would be the appropriate format for the outcome of the Commission's work on this subject.

While fully aware of the objections raised by some members of the Commission concerning the drawing-up of an indicative list of norms that currently qualify as *jus cogens*, the Romanian delegation considers the elaboration of such a list useful, either in the form of the annex to the draft conclusions or indirectly, in the commentaries.

We have some doubts with respect to the existence of *regional jus cogens*, taking into account the contradiction with the *universal* applicability of *jus cogens* as well as the practical consequences entailed by such a conclusion.

We support the decision of the Commission of placing draft conclusion 2, proposed by the Special Rapporteur, in the commentaries. The expression "*other agreement*" in the second sentence of paragraph 2 of the abovementioned draft conclusion is, in our view ambiguous and needs further clarification.

Romania underlines its interest in the topic and is looking forward to the further study of the International Law Commission in this field.

This concludes the remarks of my delegation on this cluster of topics.

Thank you.