



SLOVENIA

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STATEMENT

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Agenda item 78

Report of the International Law Commission on the work of its sixty-eight session: Cluster 1: Chapter IV: Protection of persons in the event of disasters, Chapter V: Identification of customary international law, Chapter VI: Subsequent agreements and subsequent practice in relation to the interpretation of treaties, Chapter XIII: Other decisions and conclusions of the Commission

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Sixth Committee

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Mr Chairperson,

I would like to thank the Chairman of the International Law Commission, Mr Pedro Comissário Alfonso, for introducing the report on the Commission's sixty-eighth session. I would also like to thank the Special Rapporteurs and the Commission members for their dedicated efforts during this session, and acknowledge with great appreciation the progress achieved.

Slovenia is pleased to address the Sixth Committee regarding the work of the International Law Commission on Cluster 1 topics.

Mr Chairperson,

Slovenia has followed with great interest and satisfaction the entire work of the ILC on the topic "Protection of persons in the event of disasters" and has commented on the draft articles on a yearly basis.

On this occasion, we would like to commend with outmost appreciation the Special Rapporteur, Mr Valencia Ospina, and the ILC members for the completion of the draft articles in such a short timeframe (7 years) and with such a successful outcome. Slovenia fully supports the text of 18 draft articles which are presented as final by the ILC. We are convinced that the Commission's work managed to preserve a proper balance between the protection of disaster victims and their human rights, on the one hand, and the principles of State sovereignty and non-intervention, on the other. This approach is the only guarantee for the successful recognition of rules in disaster response by States, international organizations and non-governmental actors.

The ILC recommends to the General Assembly the elaboration of a convention on the basis of the draft articles on the protection of persons in the event of disasters. Slovenia recognizes the benefits that the discussion on such a convention would bring. After all, disaster relief is one of the few areas of State and human activity which, although practiced for centuries, has not yet been comprehensively codified.

However, we believe that even if the decision on the future convention work would not be adopted in this committee, the draft articles of the ILC on the protection of persons in the event of disasters represent a solid, balanced and a useful set of rules which will contribute to the more effective disaster relief. Since the work of the ILC was closely followed and commented also by intergovernmental and non-governmental organizations in this field, particularly the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, we are confident that the rules prepared and adopted by the ILC will be used widely in practice and will gain global acceptance. And this is, in our view, the ultimate aim of this ILC project – to draft a universal legal framework to the benefit of disaster victims. Thus, the work of the ILC on the protection of persons in the event of disasters will have a significant impact.

With regard to Chapter V: Identification of customary international law, Slovenia would like to join the Commission members in their deep appreciation for the outstanding contribution of the Special Rapporteur on this topic and of the Commission as a whole which provided an extensive and intensive coverage of this topic which yielded an impressive result in the form of draft conclusions and commentaries. Since States are requested to provide their comments and observations on the conclusions and commentaries by 1 January 2018, and in order to take into consideration the balance of the conclusions as a whole, Slovenia will reserve its possible comments until that date. We also find it essential that the evidence of customary international law be made readily available and thus welcome the Commission's decision to request the Secretariat to prepare a memorandum on the present state of the evidence of customary international law and to make suggestions for its improvement.

Turning to Chapter VI: Subsequent agreements and subsequent practice in relation to the interpretation of treaties, we would like to commend the Commission and the Special Rapporteur on their thorough work on this topic. Again, since States are requested to provide their comments and observations on the conclusions and commentaries by 1 January 2018, Slovenia will reserve its possible comments until that date. At this stage, we would like to make a preliminary comment on the Fourth Report of the Special Rapporteur and ensuing conclusion 13, which have been discussed by the Commission this year. After reading the report by the Special Rapporteur and the report by the Commission, and after

comparing them with the work done by the Special Rapporteur on the identification of customary international law, a question has arisen on the role of the Commission as an expert body for the purposes of this topic. The Commission has had a key role in drafting several treaties and has discussed their interpretation after their adoption. Irrespective of the fact that, technically, the Commission is not an expert body established under a particular treaty, its discussions and possible pronouncements can certainly have an impact on how the treaties, under which no other expert body has been established to discuss their interpretation, are understood by States and international organisations. For example, the Commission is currently discussing Article 25 of the VCLT, a treaty largely drafted by the Commission, and plans to adopt guidelines in that regard; previously, it did a similar exercise in relation to reservations under the VCLT. A question therefore arises whether the Commission itself can be understood as falling under draft conclusion 13 as it is, and if not, whether its role as described could merit amending that conclusion or drafting a separate one, or at least amending the commentary to the present conclusion accordingly.

With respect to Chapter XIII: Other decisions and conclusions of the Commission, Slovenia welcomes the Commission's decision to include in its long-term programme of work the topic *Succession of States in respect of State responsibility*.

We agree that the topic deserves examination by the ILC, due to the new developments in State practice and jurisprudence. Additionally, we recognize the potential of this topic for filling the gaps that remain after the completion of the codification of succession in respect of treaties as well as State property, archives, and debts.

The case of Yugoslavia is a typical case of dissolution, i.e. a complete disintegration of a predecessor State. As in the case of the Vienna Conventions on State Succession of 1978 and 1983, Slovenia considers that the work on this topic should make a distinction between different types of succession with respect to State responsibility. For example, the responsibility of a successor State for internationally wrongful acts cannot be treated in the same manner in the case of the dissolution of a federally organized predecessor State and in the case of secession from a centrally organized State, as these are two very distinct situations. We propose that the work on this topic include these specificities.

In addition, several already codified provisions dealing with State succession could have gained the status of customary international law. We believe that in the course of this future project it would be helpful if the status of such provisions was identified and examined.

We recognize that the dissolution of Yugoslavia during the 1990's will represent one of the most important cases for the analysis of this topic in recent history. Due to Slovenia's historical experience of being one of the successor States of the former SFRY, we fully understand what consequences arise from unresolved succession issues. Therefore, we recognize the necessity of examining the topic, and we will actively follow ILC work on the subject.

I would also like to briefly address the *discussion within the Commission on possible future topics*. Slovenia agrees that it is important to engage in a thorough consideration of various options for new topics in the context of the selection process guided by the Commission's recommendation on the selection criteria. Given the Commission's workload and the limited number of topics that the Commission can address, the Slovenian delegation welcomes the emphasis made in the Commission's report that guidance in the selection of topics should also be sought from the new developments in international law and the pressing concerns of the international community as a whole. Addressing topics that reflect current challenges in international law within the ILC can contribute to enunciating various institutes, concepts, or international law questions, and consequently instigate the corresponding inter-State dialogue on pressing issues. In this context, we note and welcome the fact that the list of possible future topics in Chapter XIII of the report already contains some suggestions that correspond to the mentioned selection process, while we recognize the need for the selection process to take into account the capacities of the Commission and those of States to study the topics thoroughly and contribute correspondingly.

As this is our first intervention concerning the Commission's report, allow me to make a general suggestion concerning its drafting. We would welcome that the practice in the context of some topics where their corresponding report chapters included the summary of the discussion within the Commission be generally transposed to all topics as this would not only be helpful for States but would also introduce the necessary coherence throughout the

report. We also consider our comments on topics that are not accompanied by commentaries as preliminary in nature.

In conclusion, Slovenia looks forward to the discussion on the ILC Report in the coming days where it will contribute its views on the remaining two clusters.

Thank you.