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Report of the International Law Commission
Crimes against humanity
Provisional application of treaties
Other decisions and conclusions

Statement by

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Mr. Chairman,

Since this is the first time I take the floor under this agenda item, I would like to congratulate you and the members of the Bureau upon assumption of your responsibilities and to assure you about our full support and cooperation.

The Czech Republic will now address selected chapters included in this year's report of the International Law Commission and covered by Cluster I of the work programme of the Sixth Committee. In my presentation, I will focus on salient aspects of the relevant topics; the whole statement will be available in writing.

With regard to the topic „**Crimes against humanity**“, the Czech Republic would like to express its sincere appreciation to the Commission and the Special Rapporteur, Professor Sean D. Murphy, for his outstanding work on this topic and for the adoption, on first reading, of the whole set of draft articles with commentaries. As regards the remaining draft provisions adopted this year and dealing with the fair treatment of the offender, rights of victims and witnesses, extradition, mutual legal assistance and dispute settlement, we note with satisfaction that these provisions are based on an extensive analysis contained in the report of the Special Rapporteur and reflect recent developments in relevant areas of international criminal law.

The set of draft articles as a whole will be submitted to the states for their written comments and the Czech Republic will provide such detailed comments in due course. However, already at this stage, we would like to express our general support for the elaboration of a convention regarding prevention, prosecution and interstate cooperation with respect to crimes against humanity. This endeavor goes in the same direction as the initiative of the Netherlands, Argentina, Belgium, Senegal and Slovenia to elaborate a new treaty on mutual legal assistance and extradition concerning prosecution of the most serious international crimes. We believe that both undertakings are highly relevant and compatible.

Mr. Chairman,

Concerning the topic „**Provisional application of treaties**“, the Czech Republic welcomes the adoption, by the Commission, of 11 draft guidelines with commentaries, on the basis of proposals in the second and third reports of the Special Rapporteur, Mr. Juan Manuel Gómez-Robledo, which were considered by the Commission at its previous sessions. We also appreciate the Memorandum, prepared by the Secretariat, reviewing State practice in respect of treaties deposited or registered with the Secretary-General and providing for provisional application.

We are content with the substance of 11 draft guidelines before us. We appreciate the fact that we receive a meaningful set of draft guidelines together with commentaries thereto at the same time. It not only corresponds to the provisions of the Commission's statute, but first of all provides the governments with an opportunity to consider also the relationship between individual draft guidelines and comment on them also from this perspective. Now we would like to briefly comment on several draft guidelines and commentaries related thereto.

Our first comment relates to draft guidelines 1 and 2 on “Scope” and “Purpose”. It seems to us that one of them is superfluous. Taking into account that the outcome under this topic is

not supposed to be a legally binding instrument, in which an article on the “scope” would perfectly make sense, we suggest that the Commission consider a possibility of merging these two guidelines in a single provision clarifying the purpose rather than the scope of the exercise. Such provision would inevitably contain all elements currently present in draft guideline 1, leaving no doubts about the subject matter of the draft guidelines.

We also suggest including in such single guideline another element, namely that the provisional application under consideration concerns treaties between States and treaties between States and international organizations or between international organizations. Relevant articles of each of the two Vienna Conventions do comprise such element of precision. In the draft guidelines under consideration this aspect is buried in the commentary to draft guideline 1 and surfaces only in some subsequent guidelines, which otherwise would be difficult to understand.

Furthermore, neither draft guideline 1 nor 2 indicates that the term “treaties”, whose provisional application is covered by the draft guidelines, means treaties concluded in written form. An explicit confirmation of this aspect would be useful. It would make it clear that the draft guidelines deal with the subject matter identical with that to which Vienna Conventions of 1969 and 1983 apply. It would tighten the link between the draft guidelines and the two mentioned conventions.

Mr. Chairman,

We agree with the substance of **draft guidelines 5 and 8** dealing, respectively, with the commencement and termination of provisional application. Concerning draft guideline 8, its title indicates that it covers only cases of “Termination [of provisional application] upon notification of intention not to become a party”. Thus, the Commission decided to deal with a rather exceptional situation, in which the State or international organization gives notice of its intention not to become a party to a treaty, and not to deal with the most common situation, namely the case when the provisional application ends as a result of the entry of the treaty in force between respective States or international organizations. We are not convinced by Commission’s explanation in para 3 of the commentary to draft guideline 8 that “it was not feasible to reflect in a single formulation all the possible legal arrangements that might exist if the treaty has entered into force *for the State or international organization provisionally applying a treaty or a part of a treaty, in relation to other States or international organizations provisionally applying the same treaty or a part thereof*”. We encourage the Commission to address also these situations, even if not necessarily in a “single provision”.

Similarly we are not convinced by reasoning in **para 8 of the commentary to draft guideline 8**, according to which “the Commission decided not to introduce a safeguard in relation to unilateral termination of provisional application by, for example, applying mutatis mutandis the rule found in paragraph 2 of article 56 of the 1969 and 1986 Vienna Conventions, [...] out of concern for the flexibility inherent in article 25 and in view of insufficient practice in that regard”. We suggest that the Commission study this issue further.

We agree with the content of the **draft guideline 6** (Legal effects of provisional application). As we commented earlier: provisional application of a treaty or some of its provisions is above all an “application” of the treaty. The obligations in question are real legal obligations, even if the basis for their implementation is “provisional”. For the same reasons we also agree

with **draft guideline 7** (Responsibility for breach) and we refer to our earlier comment in this Committee, namely that the breach of a treaty obligation which is provisionally applicable entails international responsibility.

*We are also satisfied with the content of **draft guideline 9, 10 and 11** relating to internal law of States or rules of international organizations. These draft guidelines are adapting relevant provisions of the two Vienna Conventions to the circumstances of provisional application of treaties.*

Mr. Chairman,

Regarding **Chapter XI** (Other decisions and conclusions) let me state the following.

First, the Czech Republic welcomes the decision to include the topic „**Succession of States in respect of State responsibility**“ in its programme of work and congratulate Mr. Pavel Šturma for his appointment as Special Rapporteur for this topic. We note with satisfaction that the new topic meets criteria of a subject which is susceptible of progressive development and codification of international law in terms of the Statute of the Commission. We will address the topic in more detail under Cluster III of this discussion.

Second, concerning other potential topics for consideration by the Commission, the Czech Republic supports the recommendation by the Commission to include the topic „General principles of law“ in the long-term programme of work. As stated in the paper prepared by Mr. Marcelo Vázquez-Bermúdez, the discussion on „**General principles of law**“ as a distinct source of international law under article 38(1)(c) of the Statute of the International Court of Justice should clarify the nature, scope and functions of the principles, as well as the way in which the principles are to be identified.

On the other hand, we would like to express doubts concerning the inclusion of the topic „**Evidence before international courts and tribunals**“ in the programme of work of the Commission. It seems that the procedural issues related to evidence belong primarily to the competence of individual courts and tribunal. We would appreciate more arguments on the potential concrete contribution of this topic for the practice of States.

Thank you, Mr. Chairman.