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**Agenda item 81**  
**Report of the International Law Commission on the work of its 69<sup>th</sup> session**

**Intervention by**  
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Mr. Chairman,

The Hungarian delegation would like to thank the Chairman of the Commission for his helpful and detailed introduction of the Commission's report. I would also like to congratulate the Commission for a productive Session and for its extensive and valuable work. We look forward to our debate on these important topics of international law over the next two weeks. Mr. Chairman, I appreciate the opportunity to comment on the topics that are currently before the Commission and will address some of them in my statement.

Mr. Chairman,

Regarding **Chapter IV (Crimes against humanity)** of the Report, the Hungarian delegation wishes to commend Special Rapporteur Sean Murphy for his detailed and comprehensive Third Report. By the provisional adoption of seven draft articles and a draft preamble, the Commission has made enormous progress in the elaboration of a new convention in this field.

Hungary agrees with the Chairman of the Commission that strong legal measures are needed to prevent crimes against humanity and to punish the perpetrators. Therefore, Hungary supports the Commission's concept to draw further attention to the need for prevention and punishment. The codification of such measures could help States to adopt and harmonize national laws relating to such conduct, thereby opening the door to more effective inter-State cooperation on the prevention, investigation and prosecution of such crimes.

Mr. Chairman,

Let me start with draft article 12, which deals with victims, witnesses and others. Many treaties addressing crimes under international law prior to the 1980s did not contain provisions with respect to victims or witnesses and, even after the 1980s, most multilateral treaties did not address this issue. Considering that participation of victims and witnesses in any criminal procedure is crucial for the effectiveness of such procedures, Hungary welcomes the

introduction of this article. Our delegation believes that it was important to specify that the reparation referred to in paragraph 3 is for also material and moral damages.

Hungary welcomes the extended provisions on extradition and mutual legal assistance in the draft articles. Considering that crimes against humanity often have a cross-border feature, success of punishing crimes against humanity may depend on effective cooperation among states.

Concerning extradition, we are not sure whether the draft articles themselves could provide a legal basis for extradition where no extradition treaty exists (draft article 13.3.). At the same time, it may be considered whether a treaty on crimes against humanity could in itself become a legal basis for extradition.

Mr. Chairman,

Turning to draft article 14, namely provisions related to mutual legal assistance, our delegation is convinced that cooperation between States concerned is greatly enhanced by having treaty rules addressing mutual legal assistance. In line with article 4 of the draft articles, it could be considered to introduce provisions requiring states to share information with each other on the possible commission of crimes against humanity. We strongly believe that the detailed provisions on mutual legal assistance in draft article 14 could provide extensive guidance to States on whether and how to conclude mutual legal assistance treaties. We also welcome, as a practical element, the Annex requiring the designation of a central authority. This may also be considered to be extended to sharing of information aiming at prevention of such crimes.

Mr. Chairman,

Turning to Chapter VII of the report (**Immunity of state officials from foreign criminal jurisdiction**), let me start by expressing Hungary's appreciation to Special Rapporteur Concepción Escobar Hernández for her excellent work and we are pleased that the Commission considered the report of the Drafting Committee and provisionally adopted draft article 7.

Mr. Chairman,

First of all, we agree that the international community has to find a balance between the sovereign equality of States and the need for stability in international relations and, on the other hand, the interest of the international community as a whole in preventing and punishing the most serious crimes under international law. We also wish to underline that as a fundamental principle of international law and sovereignty, the courts of one State should not have jurisdiction over the acts of another State.

Hungary has also noted that the complex system of immunities should not stand in the way of the protection of the fundamental interests of the international community. We agree that the rules on immunity should not be considered in isolation, but in the light of other norms of the international legal system.

Consequently, Hungary is of the view that the Commission needs to take into account the international legal system as a whole. First and foremost, the provisions on immunities of the Vienna Convention 1961 and that of the various Host Country Agreements of international organisations all over the world, as well as the related practice of states and international organisations, and most importantly, the continuing developments of international criminal law need to be considered. We are pleased that the Special Rapporteur was encouraged to further examine regional practice, including, for example, case law from Asia and the jurisprudence of the Inter-American Court of Human Rights. We hope that European practice will also be taken into consideration.

Hungary believes that international crimes should be regarded, *prima facie*, as exceptions to immunity. Therefore, we welcome the provisional adoption of draft article 7, which clearly sets out the exceptions in respect of *rationae materiae* to the immunity of state officials from foreign criminal jurisdiction. Even though the three additional crimes, namely torture, enforced disappearance and apartheid are doubtlessly heinous crimes, it would merit further examination whether there is sufficient state practice to assert legal basis for introducing them as separate crimes among the `crimes under international law in respect of which immunity *ratione materiae* shall not apply`. We are ready to accept the Commission's decision not to include in

the list the crime of aggression, corruption and other crimes due to various well founded reasons.

Moreover, we think that the Commission's decision not to include definitions of the crimes listed in paragraph 2 directly in the draft article but in an annex is the right approach. The fact that the adopted list in the annex is limited only to a few international or universal conventions and does not contain regional instruments is also a welcome decision by the Commission.

Mr. Chairman,

Regarding Chapter IX (**Succession of States in respect of State responsibility**), Hungary would like to express its high appreciation to Special Rapporteur Pavel Šturma, whose valuable contribution, including his substantive First Report serves as guidance for the examination of the topic.

As it was pointed out, the topic has always been significant, especially in the 1990s with the dissolution of states in Central and Eastern Europe. Still, it may have contemporary relevance, as not all aspects of state responsibility for an internationally wrongful act committed before a state succession occurred, have been analysed. The scope of the examination should include the trends and case law in the current practice, political and historical contexts, traditional rules or a possible departure from the traditional rules relating to succession of states. Moreover, analysis of relevant state experience and case law, relevant international agreements, national legislation and decisions of national courts must also be included in the process, as indicated by the Special Rapporteur.

Succession of States in respect of State responsibility is a topic of interest in general international law which merits the attention of the Commission, having in mind that the outcome of the analysis of the topic may contribute to address the gaps regarding rules already codified in the two Vienna Conventions. At the same time, we have to bear in mind the complexity, even controversiality of the topic, considering the rarity of the cases, the lengthy process of adoption of codified rules and the yet unidentified readiness of the states to apply such rules; all these suggest that there is a need to take a prudent approach.

Mr. Chairman,

Regarding Chapter V (**Provisional Application of Treaties**), first let me express Hungary's appreciation for the achievements of the Commission to provisionally adopt draft guidelines 1 to 11 and the commentaries thereto, and especially to Special Rapporteur Juan Manuel Gómez-Robledo for his efforts to prepare the four previous reports.

Hungary is among the states where, although the concept of provisional application of treaties exists under national law, apart from providing for an earlier starting date for application, general treaty conclusion procedure is to be followed. This means that provisional application does not represent a fast track approach to the treaty conclusion procedure under Hungarian law, since the same rules apply to provisional application as to the standard entry into force of international treaties.

Therefore, provisional application in case of bilateral agreements is practically non-existent in Hungary. Nevertheless, Hungary welcomes the memorandum which was prepared by the Secretariat, reviewing State practice in respect of treaties (bilateral and multilateral), deposited or registered in the last 20 years with the Secretary-General, that provide for provisional application, including treaty actions related thereto. We believe that the detailed consideration of the memorandum will substantially help the Commission during the discussions of this issue at its next session. We are confident that the guidelines and commentaries thereto will provide useful assistance to States, international organisations and others concerning the law and practice on the provisional application of treaties.

Hungary will also send its written contribution to the Commission on this topic which will include more details on the Hungarian practice in provisional application related to the legal effects, the termination of provisional application and the experience gained so far.

Thank you, Mr. Chairman.