



S L O V A K I A

STATEMENT

by

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**Report of the International Law Commission on the work of its sixty-ninth
session / Cluster I (item 81)**

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(Check against delivery)

Mr. Chairman,

Allow me at the outset to congratulate the International Law Commission and its Members for the Report that has been presented to us. In particular, I would like to express our delegation's gratitude to the Chairperson of the ILC Professor Georg Nolte for his able leadership during the first session of the Commission in the new quinquennium, as well as for the presentation of the respective parts of the report to the Sixth Committee.

Mr. Chairman,

In my today's intervention I will address chapters of the report in the first Cluster, namely Chapters IV, V and XI. Allow me first to turn to the topic of **Crimes against humanity**. We would like highly commend the Special Rapporteur Professor Sean Murphy for his excellent third report, as well as the ILC for adopting on first reading draft preamble, 15 articles and annex together with commentaries thereto.

I would like to renew our strong endorsement of the work of the Special Rapporteur and the Commission and express overall satisfaction on the decision to handle the topic with a clear vision to elaborate a convention on prevention and punishment of crimes against humanity from the very outset of the consideration of the topic. This was a wise and right decision.

We take note of the decision of the Commission to transmit the draft articles to governments for comments. Slovakia is ready to provide within the set timeframe its comments and observations.

We would, however, recommend to the Commission to closely follow also various international initiatives aiming at strengthening mutual legal cooperation and assistance of states with regard to international atrocity crimes.

With regard to the work of the Commission during the current session on this topic, allow me briefly address some particular issues. We are pleased to see that draft article 5 containing the implementation of the *non-refoulement* principle was included as a part of a broader concept of the obligation of prevention. Reaffirming the application of this fundamental principle with regard to crimes against humanity can indeed play an important role in strengthening the prevention mechanism of the future convention.

We full-heartedly support the inclusion of draft article 12 on measures regarding victims, witnesses and other persons. This reflects the global trends of exercising the victim-oriented international justice in international crimes, strongly addressed also in the Rome Statute of the International Criminal Court. In this context the obligation in paragraph 3 to take measures to ensure the right of victims to obtain reparation for material and moral damages is of utmost importance.

Draft article 13 on extradition and draft article 14 on mutual legal assistance belong to core elements of a functioning legal framework aimed at ensuring punishment for crimes against humanity through effective system of international cooperation. We concur with the view that extradition may serve for some states as an option in fulfilling their *aut dedere aut judicare* obligation stipulated in draft article 10. We are satisfied that the proposed concepts and modalities for extradition and mutual legal assistance follow the similar mechanisms already contained in several multilateral conventions concerning penal matters.

We strongly support the inclusion of a dispute settlement mechanism in draft article 15. In our view the jurisdiction of the International Court of Justice generally strengthens the application and interpretation of the future convention. Although this draft article may still require some refinements, we can express our support with the basic concept in it.

Mr. Chairman,

Turning to the topic **Provisional application of treaties** allow me to express our satisfaction on the development of this particular topic by the Commission. Its approach, in over view, enabled to overcome any early hesitations that might have occurred in the initial stage of the consideration of the topic. The topic, after successful conclusion, might provide a useful set of guidelines helping states and international organization to clarify many pertinent questions regarding the provisional application of treaties and possible help states in harmonizing some particularities in their state practice.

We would like therefore to appreciate the Commission for provisionally adopting draft guidelines 1 to 11 based on the second and third report of the Special Rapporteur Juan Manuel Gómez Robledo presented at the previous sessions. My delegation would like to commend also the fact that the Commission adopted 11 draft guidelines together with commentaries, which enables, already at this stage, to consider the topic in depth. We would like to use this opportunity to express gratitude also to the Secretariat for preparing the memorandum reviewing State practice in respect of treaties deposited or registered in the last 20 years with

the Secretary-General. We are convinced that it will be useful in the upcoming discussion on the topic in the Commission next year.

Allow me at this stage to present some comments with regard specific draft guidelines. First, it seems for us slightly redundant to define the scope of the guidelines. Therefore, we think that it would be sufficient to keep the purpose defined in draft guideline 2 and merge it with draft guideline 1.

We also see some overlaps in draft guidelines 3 and 4, since they deal with basically the same issue, namely the general and specific way of agreeing on provisional application of treaties. With regard draft guideline 4 sub-paragraph b) we think that some precision is required, since in our understanding, State has to give its explicit consent, i.e. explicitly agree to apply treaty provisionally. Thus, all other forms, means or arrangements, including resolutions of international organizations, necessary have to include a positive consent of the State concerned to have the necessary effect of provisional applicability.

The draft guideline 8 needs further elaboration. In our view, there are other forms of termination of the provisional application of a treaty, which are not so far specified in the text provisionally adopted by the Commission. Besides the natural termination by entering into force of the treaty, we are convinced that state practice allows for termination of the provisional application upon notification of the State without having the clear intention not to become a party. This might be pertinent especially in cases of a prolonged ratification process, longer than originally previewed, or in case of a particular conditionality that might have been directly or indirectly linked with the agreeing to the provisional application. Exclusion of the possibility to terminate or even suspend the provisional application of the treaty without having the intention not to become a party would, in our view, restrict the broader rights of states existing before giving their final consent to be bound by a treaty.

Mr. Chairman,

We welcome the inclusion of the topic **General principles of law** in the long-term programme of work of the Commission. We appreciate Mr. Marcelo Vázquez-Bermúdez for preparing an excellent syllabus for the topic contained in Annex A of the Report. General principles of law are essential complement of primary sources of international law, i.e. treaties and custom, however they have not acquired much attention so far in the ILC. We are convinced that work on this topic has a great potential in clarifying open questions and help in better understating of this concept. The consideration of the topic is in our view a natural

development following successful work of the Commission in the field of law of treaties, as well as recent engagement in customary international law and *jus cogens*. We encourage the Commission to proceed with the consideration of this topic as soon as possible during the present quinquennium.

Mr. Chairman,

The Commission further included the topic **Evidence before international courts and tribunals** in its long-term programme. We extend our thanks to Mr. Aniruddha Rajput for preparing the syllabus on the topic, contained in Annex B of the ILC Report. We think however, that some more reflection is needed before deciding on the consideration of this particular topic. We are so far not entirely convinced that the topic might be suitable for a successful and useful outcome.

Finally, Mr. Chairman,

Allow me to comment on the issue of place of future sessions of the Commission. We are not convinced at all by some proposals to shift sessions or their part to New York. We think that the main engagement of the Commission with the states shall be during the consideration of the Report in the Sixth Committee or through written comments and not during the session of the Commission. Therefore, we strongly support the continuation of the long-standing practice of the ILC sessions in Geneva and we understand the decisions for the next year to hold the first part of the session in New York as an exception, directly linked with the commemoration of the 70th session of the International Law Commission.

I thank you Mr. Chairman.