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Report of the International Law Commission
Protection of the environment in relation to armed conflicts
Succession of States in respect of State responsibility
Immunity of State officials from foreign criminal jurisdiction

Statement by

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Mr. Chairman,

In the present statement the Czech Republic will focus on Chapters IX, X and XI of this year's report of the International Law Commission. I will read only the key parts of the statement, while the whole text of the statement will be available in writing.

Concerning the topic "**Protection of the environment in relation to armed conflicts**", we commend the efforts of both the Special Rapporteur, Ms. Marja Lehto, who submitted her first report on the topic, as well as Mr. Marcelo Vázquez-Bermúdez, Chairman of the Working group established in order to assist the Special Rapporteur in preparation of commentaries to draft principles adopted by the Commission on the basis of proposal submitted by the previous Special Rapporteur.

We note that the Special Rapporteur did not set for a new methodology of the work on the topic. This leaves us with doubts concerning the outcome of the work on this topic that we expressed in the past years.

The work done so far does not enable us to clearly understand where is the Commission heading and what should we expect as the end result. In these circumstances it is not easy for States to contribute with comments on the submitted draft "principles". Are these "principles" intended to reflect current state of international law? Are they intended to provide a guidance without pretending to be firmly founded in positive law? Or are they a combination of all of this? Further, it is not clear what is the criterion allowing to draw a line – within the law of armed conflicts – between the rules aiming at protection of the environment and other rules, and whether the rules on protection of the environment could be taken out of the context of other rules applicable to armed conflicts without a risk of altering their meaning.

We are also concerned with the approach consisting in selection of rules from various areas of international law and their discussion in connection with armed conflicts. Some of these rules may be applicable in all situation, including those of armed conflicts, and raising them specifically in the context of the present topic may give a false impression that it is not yet the case. For other rules, however, mere fact that they relate to the protection of the environment does not make them automatically suitable for the purpose of the present topic.

Mr. Chairman,

With regard to the topic "**Succession of States in respect of State responsibility**", the Czech Republic notes with interest the debate in the Commission on the draft articles proposed by the Special Rapporteur, Mr. Pavel Šturma, in his second report, as well as the progress in the Drafting Committee.

Our first observations concerns the organization of individual draft articles in various Parts. While the overall orientation of the draft articles as envisaged by the Special Rapporteur has been clearly explained, the draft articles, as they are emerging from his reports, are for the time being presented in one simple row, without being clearly organized in various Parts with appropriate titles. This may create a risk of confusion as further articles have to be expected. Should some sort of guidance be seen in Vienna conventions of 1978 and 1983, then draft articles 1 on Scope, draft article 2 on Use of terms, draft article 5 on Cases of succession of States covered by the present draft articles, and paragraph 1 of draft article 6 on no effect upon attribution should pertain to Part I which should contain General provisions. Paragraph 4 of draft article 6 and draft articles 7 to 11 should already belong to a part dealing specifically with situations where an internationally wrongful act was committed by the predecessor State. This should be clear from the title of this Part. Accordingly, draft articles that the Special Rapporteur intends to present next year in his Third report should belong to yet another Part dealing with situation where the predecessor State was an "injured state", namely where the predecessor State was a victim of an internationally wrongful act committed by another State.

In the interest of clarity, a definition of the term "another State" should also be considered for inclusion. The term "another State" would mean "a State other than predecessor State or successor State", thus excluding from the present exercise situations where an internationally wrongful act might have been committed, prior to the date of State succession, between the States which after that date appear as predecessor State and successor State (see cases of transfer of territory and unification of States).

Let me turn to those draft articles discussed by the Commission this year. Concerning draft article 5 (Cases of succession of States covered by the present draft articles), we consider important that, consistently with the approach chosen by the Commission during its past work on succession of States in relation to other matters, the Commission remain focused on effects of succession of States occurring in conformity with international law. The reasons for such approach were abundantly explained in the commentaries to what later became Articles 6 of the 1978 Vienna Convention, Article 3 of the 1983 Vienna Convention and Article 3 of Articles on nationality of natural persons in relation to State succession. *Most of the questions raised in Commission's debate this year have been answered satisfactorily in the Commission's commentaries to the mentioned articles and we firmly believe that these arguments remain as valid today, as they were at the time when the Commission formulated them. We recommend incorporation of these arguments in the commentary to draft article 5.*

Draft article 6, originally entitled General provision, addresses several issues, which I will discuss individually, in the order in which they are substantively related.

Paragraph 1 of draft article 6, as reformulated by the Drafting Committee, addresses the question of non-effect of succession of States on attribution of an internationally wrongful act committed before the date of succession of States. It does so in general terms, thus covering primarily attribution of wrongful acts of the predecessor State, but (due to its abstract formulation) has to be understood as covering also attribution of wrongful acts of a State which later became a successor State (e.g. a State which acquires a part of territory as a result of a territorial cession, or a State which retains its legal personality after having

incorporated another State). We agree with its content as reformulated by the Drafting Committee.

Concerning the notion of “attribution”, we are puzzled by the debate which took place in the Drafting Committee, as referred to in the Provisional report of its Chairman. We consider it of absolute importance that terms of the Draft articles on Responsibility of States, as well as terms of two Vienna conventions on succession of States are given the same meaning in the present draft articles.

As far as the attribution of a wrongful act committed by a predecessor State to this State is concerned, paragraph 1 applies irrespective of whether such predecessor State continues or ceases to exist after the date of succession of States. We consider this provision to be a logical and necessary prelude to paragraph 4 of draft article 6.

These two paragraphs together highlight the contrast between the “attribution” of an internationally wrongful act which always remains with the very author of such act, and the invocation of secondary rights and obligations stemming from that act, which eventually could involve the successor State or States.

Unlike paragraph 1 which addresses “attribution” in general terms, paragraph 4 deals with issues relating solely to an international wrongful act of the predecessor State (and should accordingly belong to another Part). It should also be kept in mind that while paragraph 1 deals with “attribution”, paragraph 4 deals with substantively different issue, namely that of claims for “reparation” - another reason for treating both issues in separate draft articles.

Paragraph 3 of draft article contains a saving clause that we have some misgivings about. We have doubts whether this question needs to be discussed under current topic at all. Let me explain why. In our view, an internationally wrongful conduct of a predecessor State which is later acknowledged and adopted by the successor State as its own has to be considered an act of this State (i.e. successor State). As such this conduct is directly attributable to the successor State already under article 11 of Articles on Responsibility of States. Indeed, the “successor State” is simply “a State”. The predecessor-successor relationship has no significance here. This problem therefore does not need to be discussed under the current topic. This topic should deal solely with secondary obligations and rights resulting from an internationally wrongful act of the predecessor State, namely the act which is not directly attributable to the successor State. Moreover, the problem of a “continuing international wrongful act” is, in our opinion, wrongly invoked here. The issue of a “continuous character” of a wrongful act is an issue of “extension in time” of a breach of an international obligation by the wrongdoing State and cannot be confused with the situation covered by article 11.

Ideally, in our view, the idea of paragraph 3 should be explained in the commentary to the draft article on “attribution” (currently paragraph 1). Similarly, we believe that paragraph 2 does not go beyond what is already contained in Articles on Responsibility of States and we do not see any reason for such repetitive provision. Again, if necessary, this aspect could be recalled and explained in the commentary.

Finally, one additional comment on paragraph 4 of draft article 6: we consider it important to include an “umbrella” provision of this kind which reflects the philosophy guiding the present exercise and at the same time indicates that this general rule will be further specified in the provisions to follow. Such provisions - and here I refer to our remarks from the last year - should more substantively revolve around specific forms of reparation, *i.e.* restitution, compensation and satisfaction instead of summarily addressing “responsibility” in general terms. *They should clarify how would provisions of Articles on Responsibility of States concerning these specific forms of reparation operate if the predecessor State ceases to exist, but also how would they operate if the predecessor State continues to exist, while the means for e.g. the restitution would be available only to the successor State or would require joint action of the predecessor State and the successor State, or joint action of two or several successor States. In this respect the answers may be cross-cutting various types of succession of States and, accordingly would appear as repetitive, if the typology of Vienna conventions is closely followed.*

We will revert to all these issues once we are presented with the draft articles as adopted by the Commission and accompanied with commentaries.

Mr. Chairman,

Now I will briefly comment on the topic “**Immunity of State officials from foreign criminal jurisdiction**”. The Czech Republic would like to express its appreciation to the Special Rapporteur, Ms. Concepción Escobar Hernández, for her sixth report, in which she initiated consideration of the procedural aspects of immunity of State officials. Since this analysis should be completed (and new draft articles submitted) next year, we will limit our intervention on this topic to several brief and preliminary comments.

First of all, we recommend that the consideration of the procedural aspects of immunity of State officials from foreign criminal jurisdiction is based on functional, empirical and practical approach. In this regard, the analysis should be based on relevant practice of States, namely their laws on criminal procedure and decision of national courts, on treaties regulating international judicial cooperation and mutual legal assistance in criminal matters and relevant case law of international courts.

Further, we would like to point to the fact that the issue of procedural aspects of immunity of state officials is related to other former, current, or possible future topics on the agenda of the Commission, such as the topics *aut dedere aut iudicare*, crimes against humanity, and universal jurisdiction, which was included in the long-term programme of work at the current session. As mentioned in the Commission’s debate, this relationship requires the pursuit of common approach to ensure consistency in various outputs of the Commission.

The debates in the Commission on this topic indicate that it is important to address immunity issues at an early stage of the proceedings, namely before the restrictive measures are taken against the official that hinder him or her in the performance of his or her duties. However, it seems that this determination of immunity depends on the concrete situation and the type of

immunity concerned. These issues should be further analyzed on the basis of existing law and practice, as mentioned above. Further, it would be useful to try to clarify the relationship between procedural invocation of immunity *ratione materiae* by the home State of the official, waiver of that immunity by the same State and the consequences thereof, including consequences for the civil liability and international responsibility of such State. As the case law indicates, when the home State of the official acknowledges that the State official acted in the exercise of his official functions, it assumes the civil liability under foreign national law and responsibility under international law for these official acts, and, at the same time, immunity *ratione materiae* becomes applicable.

On the other hand, given the limited time available for consideration of procedural aspects of this topic and its connection to other topics mentioned above, we suggest that the Commission limit its current analysis to procedural issues most pertinent to the immunity of State officials. For example, the application and possible limitation of the prosecutorial discretion is rather general issue of criminal procedure, belongs to the domain of national law, and is not directly connected with the legal consideration of the immunities of State officials from foreign criminal jurisdiction.

Thank you Mr. Chairman.