



S L O V A K I A

STATEMENT

by

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Sixth Committee**

**Report of the International Law Commission
on the work of its Seventieth Session (item 82)
Cluster I**

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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 Mr. Eduardo Valencia – Ospina for his able leadership of the current session of the Commission. We also congratulate Mr. Evgeny Zagaynov for being elected member of the Commission at the session. The 70th anniversary session has been indeed very productive one. The Commission has been able to conclude two topics on second reading and further two topics on first reading. Nevertheless, it is worth noting that with respect to some other topic sufficient time has not been allocated, which would be required for their due consideration.

Mr. Chairman,

My today's statement is to address issues in Cluster I, namely Chapters IV, V, XII and XIII of the ILC Report. Allow me first to turn to the topic of the Chapter IV "**Subsequent agreements and subsequent practice in relation to the interpretation of treaties**". We acknowledge with appreciation that the Commission adopted set of 13 draft conclusions together with commentaries on second reading, and we would like to congratulate the Special Rapporteur Professor Georg Nolte for his dedication and hard work.

We are of the view that the draft conclusions have potential to enhance the relevant provisions of the Vienna Convention on the Law of Treaties with respect of the interpretation of treaties, namely the provisions of Articles 31 and 32 of the Convention. In particular, we appreciate that the draft conclusions consider the subsequent agreements and subsequent practice as authentic means of interpretation, i.e. reflecting the will of Parties of a treaty. In this context, it is essential to underline that subsequent practice and subsequent agreements may, indeed, be an indicator of whether it is the will of Parties to a treaty to give terms a dynamic interpretation that evolves over time.

Generally, we admit that draft conclusions could be a useful basis for interpretation of treaties as an enhancement of the previously mentioned provisions of the Vienna Convention on the

Law of Treaties. However, we are a bit skeptical in this regard as concerns specific aspects reflected in draft conclusions 11, 12 and 13. Certain doubts in our view remain with respect to the additional value of those conclusions, since they are drafted, in each case, by a mere reference to applicable rules of the treaty in question.

We fully support the recommendation of the Commission that the General Assembly shall take note in a resolution of the draft conclusions, annex the draft conclusions to the resolution, and ensure their widest dissemination of all who may be called upon to interpret treaties.

Mr. Chairman,

Slovakia notes with utmost satisfaction that the Commission has completed its works on the topic of **Identification of customary international law** having adopted the set of 16 draft conclusions with commentaries on second reading. We seize this opportunity to congratulate the Commission for the outcome that will definitely provide an efficient and useful assistance and reference to all those who deal with or are to identify customary international law either on international or national level, including domestic courts. The set of conclusions are delicately drafted and the extent of commentaries is suitably chosen. Thus the final outcome of the topic fully meets our expectations we had at the beginning of the Commission's work. Therefore, we fully endorse the recommendation of the Commission to the General Assembly to take note of draft conclusions on identification of customary international law and annex them thereto.

It is in this context that Slovakia would like to thank and highly commend Sir Michael Wood for his extraordinary work and commitment to the topic as Special Rapporteur. Especially, we appreciate the consistency of the approach with which the topic has been treated, still with due regard to the comments made by States.

We gladly acknowledge that the works on this topic have been based on the two-element theory that is the headstone of customary international law. Yet none can question the interconnection of the two elements, indeed, both elements must be assessed and ascertained separately, what is, in our view, duly reflected in the draft conclusions.

In relation to the practice, we praise the balance that has been found in the question of whose practice could and should count as contributing to the formation, or expression of rules of customary international law with a clear primary role of practice of States. Further, despite the fact that the length of practice has been omitted as its characteristic, Slovakia welcomes that the idea of instant custom has been brushed aside. As approved in the commentaries, general practice implicitly requires certain period of time.

Lastly, in our view, some open questions remain in connection with the implications of draft conclusion 16. Even though the commentary to this draft conclusion reflects, what Slovakia has been pointing at regularly, that there always seems to exist a certain geographical link among the States applying particular customary international law, the Commission eventually left open an option that there could be other than regional, sub-regional or local particular customary international law. However, the commentary does not contain any example of that other particular customary international law.

Mr. Chairman,

Commenting on future work of the International Law Commission, allow me to welcome the decision to include the topic **General principles of law** in its programme of work and to appoint Mr. Marcelo Vázquez-Bermúdez as Special Rapporteur for the topic. We wish him and the Commission all the luck in choosing the right approach in the consideration of the topic. We are of the view that the work should focus rather on the role of general principles of law in international law, and on ways and means in identifying their elements, than try to provide any artificial enumeration of the principles, be it demonstrative only.

Furthermore, we have dully noted the decision of the Commission to include two new topics in the long-term programme of work. We appreciate first of all the inclusion of the topic **Universal criminal jurisdiction**. We express our thanks to Professor Charles Chernor Jalloh for preparing the syllabus for the topic contained in Annex A of the ILC Report. A nearly decade long torment of the Sixth Committee in consideration of the agenda item *The scope and application of the principle of universal jurisdiction* has been in our view due to the fact that the purely legal nature of universal jurisdiction had not been firstly addressed by the International Law Commission. Decision to include the topic in the long-term programme of

work gives us a hope that the consideration of legal aspects related to universal jurisdiction will, at least partially, soon go where it really belongs.

We note the decision to include in the long-term programme of work also the topic entitled **Sea-level rise in relation to international law**. The syllabus to this topic, prepared as a collective work of five members of the Commission, already envisages creation of a Study Group and an elaboration of a set of conclusions as a final outcome. We do have many concerns with respect to this particular topic and the outlined approach. On one hand we can agree with the Commission that it should not restrict itself to traditional topics and could also consider those that reflect new developments in international law and pressing concerns of the international community as a whole. However, this approach shall not be inattentive and has to follow first of all the ILC recommendation regarding the criteria for the selection of the topics. While one can definitely agree that proposed topic might reflect the needs of certain States in respect of the progressive development and codification of international law, we are not convinced at all that the topic is at a sufficiently advanced stage in terms of State practice to permit progressive development and codification, as well as it is not sufficiently concrete and feasible for progressive development and codification. In addition, legal questions arising potentially from the sea-level rise fall in our view within the scope of the law of the sea, and shall be therefore addressed primarily in the framework of UNCLOS. Thus in this sense, there is virtually no room for the ILC to engage either in any codification or progressive development.

Finally, Mr. Chairman,

Allow me to briefly touch upon the issue of the place of future sessions of the Commission. We are satisfied to see that a full session in Geneva is envisaged in the Commission's recommendation for the next year. This is in line with the long-standing practice. We understood that holding the first part of the 70th session in New York was an exception, directly linked with the commemoration events. We continue to 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.

I thank you, Mr. Chairman.