



Check against delivery

## **STATEMENT**

**BY**

**Dr Marko Rakovec, Director-General of the Directorate for International Law and Protection of Interests at the Ministry of Foreign Affairs of the Republic of Slovenia**

**Agenda item 82: Report of the International Law Commission on the work of its seventy-second session**

**Cluster I:**

**Chapter IV: Protection of the atmosphere**

**Chapter V: Provisional application of treaties**

**Chapter X: Other decisions and conclusions of the Commission**

**76th Session of the General Assembly  
Sixth Committee**

**New York, October 2021**

Madam Chairperson,

Slovenia is pleased to be able to discuss the report of the International Law Commission this year and present its findings on the extensive and detailed work of the members of the Commission at their seventy-second session.

At the outset Slovenia will address three topics within this cluster, namely Protection of the atmosphere, Provisional application of treaties, and Other decisions and conclusions of the Commission. In the following, Slovenia is also looking forward to addressing the other topics within the remaining two clusters.

Madam Chairperson,

In the context of Protection of the atmosphere, which is addressed in the fourth chapter of this year's report, Slovenia wishes to express its appreciation to the International Law Commission and, in particular, the Special Rapporteur Mr Shinya Murasa for his extensive efforts on the topic resulting in adoption of the draft preamble and draft guidelines on the protection of the atmosphere.

Slovenia acknowledges its great contribution to raising awareness of the common responsibility of humankind for the atmosphere. The present topic is a reflection of a number of modern human factors that contribute to reducing the level of quality of life. In connection with this modernity, new issues of modern law are arising, which, among others concerns are also represented in this topic.

Regarding the importance of being fully engaged with the international community's present-day needs, it is necessary to be aware that the atmospheric pollution and atmospheric degradation that are happening now, at this moment, will not go away tomorrow. The

question of how to deal with the consequences of what is inevitable merits particular attention. And this is inevitable – it is inevitable that future generations will have to manoeuvre the consequences of today's indifference to this question.

Slovenia therefore particularly agrees with the Commission's presented draft guidelines, which refer to obligation of States, namely the obligation to protect the atmosphere (draft guideline 3), the obligation to ensure that an environmental impact assessment is carried out (draft guideline 4) and the obligation to cooperate (draft guideline 8).

Slovenia wishes to reiterate the importance of the topic and to express support of Commission's endeavours to the much-needed well-being of future generations.

Madam Chairperson,

Please allow me to refer to the next topic, namely Provisional application of treaties.

Slovenia highly appreciates the Commission's consideration of this topic within its programme of work and commends the Special Rapporteur Mr Juan Manuel Gómez Robledo for his dedicated work resulting in the "Guide to Provisional Application of Treaties". We believe that the Guide will provide support to States when resorting to the provisional application of treaties. Slovenia has actively followed this topic and participated with comments and suggestions in the 6<sup>th</sup> Committee. We would at this point like to thank the Special Rapporteur and the Commission for taking several of our suggestions on board. Today we have only a few general remarks on the Guide.

We believe that the Guide contributes to the clarification of several issues in relation to the provisional application, the most significant being the one on the legal effect of this mechanism, which we fully support. We also support the Commission's acknowledgment of

the flexible nature of the mechanism. However, we also believe that certain issues that have been discussed should also have been reflected in the Guide, because their absence is likely to generate further uncertainties.

For example, the Guide does not address the relationship between provisional application and "provisional entry into force", other than to imply in the commentary of Guideline 1 that the latter term is not to be understood as a substitute for provisional application, which would imply that it relates to something else. But what that is the Guide does not explain, although these two mechanisms do coexist in treaty practice.

The Guide also does not explain the interaction between the provisional application from Article 25 and the so-called interim obligation from Article 18 of the VCLT, which relate to the same time period before a treaty enters into force. We believe that it would be useful to explain for example in Guideline 9 the effect of the termination of provisional application on the interim obligation if the State notifies others that it does not wish to become party to a treaty, since the interim obligation ends in a very similar way under Article 18.

Madam Chairperson,

Although the Guide on the provisional application of treaties could, in our view, be more comprehensive, we do believe that after so many years of relying on provisional application in practice without an authoritative guidance from the Commission, the Guide is indeed a commendable achievement, which will enhance clarity when concluding and implementing treaties.

Madam Chairperson,

With respect to Chapter X: Other decisions and conclusions of the Commission, Slovenia would like to comment on the parts of this Chapter that reflect the endeavours of the Commission to adapt to the current situation and, even more crucially, to the future.

The work of the central organ in the field of the progressive development of international law and its codification should be relevant and in accordance with the current developments. Slovenia therefore welcomes the reconvening of the Working Group on the long-term programme of work and emphasises that it is important to engage in a thorough consideration of various options for new topics. In particular, Slovenia supports the engagement of the Commission in the field of environmental law and considers that the Commission should continue to address topics that reflect current challenges in international law.

One of the topics that Commission could look into is the principle of universal jurisdiction. Such a proposal received overwhelmingly positive reactions during the recent meeting of the Committee of Legal Advisers on Public International Law of the Council of Europe – CAHDI.

Madam Chairperson,

Slovenia would like to use this opportunity to express its appreciation for the ongoing dialogue between members of the Commission and members of other bodies. We are particularly pleased that members of the Commission regularly address the Working Party of the Council of the EU on Public International Law – COJUR and CAHDI. We believe that regular cooperation enriches the work of the Commission and of the participating bodies.

One area where further steps should be taken to improve the Commission's standing is gender parity. The Commission has only had a total of seven women members. At the elections this year, only eight female candidates were nominated, a record number, which unfortunately still only amounts to approximately sixteen per cent of the nominations. First and foremost, countries should strive to nominate more female candidates. Nevertheless, we also see potential for a possible contribution of the Commission in this regard, namely presenting some activities in the Annual Report.

The ratio between the number of current female members and the results of their work is stunning. Two of the four female members of the Commission are Special Rapporteurs and the other two are co-Chairs of a Study Group. Furthermore, the chair of the drafting committee of the seventy-second session was a woman and so were some other officers at past meetings. Slovenia applauds their impressive work and believes that the abovementioned Annual Report could reflect such information and other relevant activities that may contribute to achieving gender parity.

Madam Chairperson,

Let me conclude by reaffirming our strong appreciation for the work of the Commission and our readiness to support its work in the future.