



S L O V A K I A

STATEMENT

by

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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 President of the ILC Commissário Afonso for his able leadership during the 68th session of the Commission, as well as for the presentation of the respective parts of the report to the Sixth Committee. Our appreciation goes also to the other members of the bureau, chairman of the Drafting Committee, Professor Pavel Šturma together with other members of the committee.

Mr. Chairman,

Allow me first to turn to the topic of **Protection of persons in the event of disasters**. We would like to commend the ILC and the Special Rapporteur Mr. Eduardo Valencia Ospina for the finalization of the work on the topic.

As an active provider of humanitarian aid and disaster relief, Slovakia is pleased that the draft articles were adopted by the Commission on second reading, and notes the recommendation to the General Assembly, namely the elaboration of a convention on the basis of the draft articles.

Disasters, whether natural or human-made, have instant damaging impacts on the persons concerned. For this reason and as strong proponents of the respect for human dignity and protection of human rights, we express our vocal support for the strong accents placed on these principles in the draft articles. Any disaster relief action not respecting the above principles, as well as the well-established and universally recognized humanitarian principles could not be considered meaningful and would fail to meet the purpose of such action.

Let me now turn to the role of the affected State. We believe that the State in whose territory or in territory under whose jurisdiction or control a disaster occurs is best-placed to take immediate action. At the same time, we note that the severe nature of disasters encountered by humankind may pose demands for disaster relief assistance hardly to be met by the affected State. Stressing the duty to cooperate which includes – as a special form, in our view - the duty

to seek assistance from other States, the United Nations and other potential assisting actors can significantly contribute to the attainment of the purpose of disaster relief action. The practical implementation of that duty may also strengthen the solidarity between States.

Slovakia highlights the careful balance that has been reached through draft Article 13 between the duty to seek external assistance and respect for sovereignty of the affected state, as well as the relationship with other applicable rules of international law, especially international humanitarian law in draft Article 18.

As to the form of the final outcome, we express some concerns about starting with the elaboration of the convention. Taking into account the nature and the content of the draft articles, including some disputed elements, we are convinced that the process of the drafting of the convention would not bring a desired result. We recommend to revert to the question in future and also consider to possibility to adopt the draft articles as guidelines.

Mr. Chairman,

Before touching upon the substance of the topic **Identification of customary international law**, let us express our profound thanks to the Special Rapporteur Sir Michael Wood for his outstanding work throughout the years resulting in four exclusive reports. In this context, we cannot omit expressing our thanks also to the Secretariat for the memorandum concerning the role of decisions of national courts in the case law of international court and tribunals of a universal character for the purpose of the determination of customary international law.

Slovakia highly appreciates 16 draft conclusions with commentaries elaborated by the Drafting Committee and adopted by the Commission on first reading, as they represent a tangible and valuable outcome with perspective to help judges and legal practitioners identifying customary international rules in practice.

Taking into account the nature and purpose of the draft conclusions, we stress the importance of the commentaries that form indispensable part of the draft conclusions and shall be used and interpreted together.

Slovakia fully endorses the two-element theory of customary international law, which enjoys overwhelming long-lasting acceptance within the international community. Yet, the two elements are separate but interconnected at the same time. An evidence of general practice might from slightly different point of view reflect *opinio juris* and vice versa. The distinction between them might in certain cases be of just a minor detail subject to level of sensitivity of the entity identifying customary international rule. Nevertheless, each element has to be considered and examined separately and none of them should ever have the primacy over or compensate for another.

It is also absolutely inevitable that there is no hierarchy between the different forms of evidence of the two elements. Evidentiary relevance of each form varies case by case. This is to be decided upon solely by the Court as it forms a substantial part of the judicial independence and the principle of free assessment of evidence. Whereas draft conclusions comprise typical forms, practice proves that existing great variety of them cannot be exhaustively seized. Thus, we do welcome that enumeration of different forms of practice and *opinio juris* is not exhaustive, but demonstrative, leaving space also for any new forms in the future.

Mr. Chairman,

With regard to the particular custom we stress the importance of geographical affinity or geographical link as a predominant characteristic of particular group of states. Although we note that there is no reason in principle why a rule of particular customary international law should not also develop among States linked by a common cause, interest or activity other than their geographical position, or constituting a community of interest, lack of any examples with this regard makes this self-evident conclusion harder to accept. We would therefore suggest that commentary provides for more clarity and examples in this regard.

Mr. Chairman,

Let me turn to Chapter XIII of the ILC Report **on Other decisions and conclusions of the Commission**. Better availability of evidence of customary international law could make a significant contribution not only to the work of the ILC itself but also serve the attainment of more thorough knowledge of the law globally. The results of the future analysis of State practice in respect of treaties deposited or registered in the last 20 years with the Secretary-General will

provide tangible input for the ongoing considerations of the Commission. For the above reasons, we note those requests with satisfaction and strongly support the Secretariat in meeting them.

We welcome the establishment of a Planning Group which we view as an institutional mechanism suitable for a more efficient long-term planning of the work of the ILC. We believe that it is absolutely necessary to prioritize as the complexities of the present international legal order present the Commission with an increasing number of topics to be possibly addressed, and yet there is a number of unfinished topics at the ILC agenda.

As to the topics included in the long-term programme of work, the Settlement of international disputes to which international organizations are parties is a natural step from the earlier adopted articles on the responsibility of international organizations. With relation to the scope of the topic, we wish to note that several international organisations have well-elaborated dispute settlement mechanisms for disputes between different organs of the organisation, as well as between the organisation itself and its Member States. Any future work should thus have due regard to the relevant practice of those organisations.

Regarding the second topic indicated (Succession of States in respect of State responsibility), we believe that while State practice might not have been sufficient and evident enough at the time of consideration of the responsibility of States for internationally wrongful acts, the topic definitely merits the attention of the Commission at present and would complement its earlier work relating to the issue of succession of States. As a State faced in the past with the questions of succession of state responsibility, particularly in the Gabčíkovo-Nagymaros case, we consider the consideration of the topic useful, however note possible difficulties and different layers of problems in identifying general rules and principles governing succession to State responsibility.

As to the proposed holding the part of the session of the ILC in New York, Slovakia continues to believe that changing the well-established longstanding practice of holding the sessions of the ILC in its seat in Geneva lacks sufficient merit. ILC is an independent body of experts and we are of the view that the interaction with the sixth committee should happen

primarily during the session of the committee under the consideration of the ILC report and not during the sessions of the Commission.

I thank you Mr. Chairman.