



S L O V A K I A

STATEMENT

by

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Mr. Chairman,

In my today's intervention I will address Chapters VII, VIII and IX of the ILC Report, i.e. the topics Crimes against humanity, Protection of the atmosphere and *Jus cogens*. We would like once again thank the Chairman of the International Law Commission for the introduction of the relevant chapters of the report to the Sixth Committee.

Mr. Chairman,

Allow us to address first the topic **Crimes against humanity**. We commend Special Rapporteur Sean Murphy for his second report and for retaining the approach to the topic, which is overall satisfactory. We welcome provisional adoption of another 6 draft articles as well as commentaries thereto. Thanks goes also to the Secretariat for the memorandum providing information on existing treaty-based monitoring mechanisms which can surely be of relevance for the future work of the Commission.

As regards the draft article 5, we note with appreciation that the provisions therein do stem mainly from the Rome Statute, which we think is well balanced and covers up-to-date perception of command responsibility.

The idea of criminal liability of legal persons, especially with respect to crimes against humanity, is indeed challenging. We will closely follow how this liability develops in further work. As specifically mentioned in the commentary, such type of liability is unknown in many countries, not even for the crimes against humanity. Slovakia has adopted a new legislation on the criminal liability of legal persons earlier this year, but still, the crimes against humanity were not included in the scope of crimes legal person can commit. On the other hand, we do understand the merits behind.

We fully support also all other draft articles, particularly draft articles 9 and 10. Draft article 9 together with article 6, paragraph 2 seem to ensure no safe havens exist, as States shall either prosecute or extradite or surrender the person to another State or international criminal tribunal for criminal proceedings, and the perpetrators do not escape from being held to account. Draft article 10 anchors fundamental principles of criminal procedure on fair treatment forming

the essential pillars of the modern criminal law. In certain cases, one might argue those, together with principle *aut dedere aut judicare*, reflect customary international law.

Once again I would like to express our endorsement of the work of Special Rapporteur and the Commission and our hopes that the further reports will keep the same approach and direction as those previous. Let me once again stress that the decision to handle the topic with a vision to elaborate a convention on prevention and punishment of crimes against humanity from the very outset of the consideration of the topic, was the right and wise decision.

Mr. Chairman,

Allow me to turn now to the topic of the **Protection of the atmosphere**. We take due note of the Chapter VIII of the Commission's report, the discussion during the 68th session of the ILC based on the third report submitted by the Special Rapporteur Shinya Murase, as well as the provisional adoption of five draft guidelines and a preambular paragraph, together with commentaries thereto.

Although noting the progress in the attempt of the Special Rapporteur in developing the concept further on the basis of draft guidelines, we continue to be concerned, in general way, whether the topic is indeed suitable for a final outcome of the International Law Commission at all. Nevertheless, some progress has been made during the current session of the ILC, namely adapting existing and established concepts and principles of the international environmental law to the object of the topic – protection of the atmosphere, e.g due diligence principle or obligation to conduct environmental impact assessment. In this sense we welcome that the draft guideline on common concern of humankind was dropped and the draft guideline on the obligation to protect the atmosphere was substantially redrafted from a general obligation to a specific obligation by exercising due diligence. On the other hand, we are not convinced at this stage by the approach taken in draft guidelines 5, 6 and 7. Although sustainable utilization, equitable and reasonable utilization and even large-scale modification of the atmosphere might seem pertinent to the topic, we consider drafting guidelines on these particularities premature, since in our view, the scope of the guidelines itself still lacks clarity.

Mr. Chairman,

Before elaborating on various other aspects of the topic *Jus cogens*, we would like to express our sincere gratitude to Special Rapporteur Mr. Dire Tladi for his first report. The concept of *jus cogens* is of great importance and interest of the whole international community, therefore, it requires truly careful and sensitive approach. We welcome the primary focus of the Commission's work on the methodological aspects of *jus cogens*.

As to whether or not include therein an indicative list of peremptory norms, we share the opinion that an indicative list, consisting only of those peremptory norms which have been multiply and explicitly identified in the practice of international courts and practice of States, would be of significant assistance and would bring more legal certainty.

Referring to the existence of regional *jus cogens*, we express our doubts such concept does have any legal basis in international law, nor finds its grounds in the practice of States. Introduction of such rules would definitely cause problems in application, interpretation and defining mutual relation of multilateral treaty rules, customary rules and these regional peremptory norms.

In our conclusive remark to this topic, we would like to underscore that we are eager to examine next reports and studies of the Commission and Special Rapporteur. Slovakia fully aligns with the intention of Special Rapporteur to consider the criteria for *jus cogens* and their consequences in upcoming years. In our view, peremptory norms reflect and enshrine fundamental values of the international community. Although, so do the principles of international law. In this regard, we encourage Special Rapporteur to undergo a study on the relationship between the principles of international law and *jus cogens* and their possible interconnection. We consider further useful the intention of the Special Rapporteur to consider the relationship between *jus cogens* norms and *erga omnes* obligation, including within the context of treaty-based *jus cogens*.

We wish the Commission and Special Rapporteur productive and successful years to come resulting in visible tangible progress.

I thank you Mr. Chairman.