



# SLOVENIA

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## STATEMENT

BY

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Agenda item 78

Report of the International Law Commission on the work of its sixty-eight session: Cluster 2: Chapter VII: Crimes against humanity, Chapter VIII: Protection of the atmosphere, Chapter IX: *Jus cogens*

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Sixth Committee

**New York, 28 October 2016**

Mr Chairperson,

It is my pleasure to address the Sixth Committee regarding the work of the International Law Commission on Cluster 2 topics.

With respect to Chapter VII: Crimes against humanity, Slovenia welcomes the six new draft Articles with commentaries thereto that deal with important substantive elements such as criminalization under national law and the establishment and exercise of national jurisdiction.

Concerning draft Article 5, the Slovenian delegation agrees with the inclusion of various preconditions essential for the domestic prosecution and punishment of crimes against humanity, including the duty of criminalization, the prohibition of the statute of limitations, and the requirement for penalties to be appropriate for the gravity of the crime. With respect to the latter, Slovenia would like to underline the fact that Article 77 of the Rome Statute does not include death penalty. We would like to see the work on this topic reflect this particular feature of the Rome Statute.

Given the number of states parties to the Rome Statute, which includes crimes against humanity, it is important that the work on this topic continues to proceed in a manner that is complementary to the system of the Rome Statute.

Slovenia therefore welcomes the fact that the Rome Statute framework was followed in drafting paragraphs 2 and 3 of draft Article 5, while noting that various other notions used to describe an individual's manner of participation in the crime, which in fact have the same substance, may already exist in national criminal law.

Taking into account the fact that the Rome Statute provisions were closely followed for the purpose of paragraphs 2 and 3 of draft Article 5, my delegation would welcome an examination of the relation with the notion of State responsibility in the context of this work, bearing in mind the specificity of paragraph 4 of Article 25 of the Rome Statute and, on the other hand, taking into account the relevant jurisprudence of the International Court

of Justice concerning the Convention on the Prevention and Punishment of the Crime of Genocide.

Turning to the inclusion of paragraph 7 on the liability of legal persons for the commission of crimes against humanity, Slovenia recognizes and welcomes the progressive approach taken by the Commission. As rightly noted by the Special Rapporteur, the criminal liability of legal persons, while not significantly featured in international criminal courts and tribunals, has gained growing attention and has become a feature of several national jurisdictions. Legal persons can contribute significantly to the suffering of victims of crimes against humanity. While recognizing the need to address this aspect carefully and thoroughly, Slovenia supports the inclusion of paragraph 7 which is progressive in nature, but allows States considerable flexibility concerning its implementation. We believe that paragraph 7 could constitute a notable novelty and an important contribution to the ongoing work.

Slovenia attaches importance to the emphasis placed on the fair treatment of the alleged offender. Furthermore, Slovenia finds it important that the draft articles contain appropriately broad basis for the establishment of national jurisdiction, including universal jurisdiction.

Slovenia welcomes the report prepared by the Secretariat on the existing treaty-based monitoring mechanisms, which may be of relevance to the future work of the International Law Commission. Looking ahead, Slovenia considers that it would be necessary to assess the compatibility and the relationship of any future monitoring mechanism with the existing relevant mechanisms.

With regard to Chapter V: Protection of the atmosphere, Slovenia recognizes the importance of addressing the issue of the protection of the atmosphere; we thus welcome the progress made regarding the topic, with a view to adopting globally-accepted guiding principles.

With the important milestone reached with the signing of the Paris Agreement and the international community's recognition of the need for sustainable development in the field of the global atmosphere, the Slovenian delegation supports the approach to the topic that

does not interfere with the relevant political negotiations of the existing treaty regimes but at the same time reflects the current stage of international law and developments as well as the necessary ambition.

Concerning draft guideline 4 on environmental impact assessment, greater clarity of the scope and the meaning of the threshold 'significant adverse impact on the atmosphere' are required in the context of the specificities of the topic. Moreover, the commentaries mostly focus on the idea of an activity that is likely to have a significant adverse impact whereas it would be useful to take into account situations where the impact is caused by several activities.

With respect to the question of transparency and public participation in the context of environmental impact assessment, we note the decision not to include procedural aspects in the draft guideline; however, we note that the commentary does not contain the reasons for such a decision. We consider that the fact that the topic includes the intentional large-scale modification of the atmosphere, which can admittedly have significant beneficial effects, but can equally have unexpected and far-reaching consequences, calls for a re-evaluation of the decision not to include this aspect into the draft articles.

Furthermore, paragraph 5 in the Commentary to draft guideline 4 would merit additional explanation. The paragraph, as it currently stands, indicates that the impact of the potential harm must be significant for both atmospheric pollution and atmospheric degradation, which could be seen as implying that the significance of the impact of an activity is reached only when both atmospheric pollution and atmospheric degradation cumulatively are affected.

Mr Chairperson,

Concerning the topic *Jus cogens*, Slovenia welcomes the first report on the topic and notes the rich debate in the Commission. The Slovenian delegation, recalling its previous statement on the topic, notes the thorough consideration of the characteristics that are inherent in a *jus cogens* rule, and wishes to underline that it agrees with the enunciation of

jus cogens norms as having a special and exceptional character, reflecting the common and overarching values attained within the international community. It is precisely with this understanding that we would like to reaffirm our view that the institute of the persistent objector is incompatible with the nature of *jus cogens*. Allowing the notion of the persistent objector to extend from customary international law norms to *jus cogens* norms would be contrary to the inherent character of *jus cogens* norms, from which no modification, derogation or abrogation is permitted, with a view to ensuring universal adherence to rules of such an exceptional nature. For similar reasons, we do not believe that the notion of regional *jus cogens* is compatible with the nature of *jus cogens*.

Slovenia notes that different views were expressed within the Commission on the advisability of establishing an indicative list of norms that have acquired the status of *jus cogens*. Slovenia shares the view that pointing to examples of *jus cogens* norms fits within the scope of the Commission's work. An indicative list based on the legal rationale would be a useful contribution in the context of the work on the topic.

Thank you.