



S L O V A K I A

STATEMENT

by

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Mr. Chairman,

First, I would like to commend Mr. Bernd Niehaus, Chairman of the International Law Commission, for the excellent work the Commission has done during this year's session and for his leadership. In my intervention I will address Chapter IV of the ILC Report on "Subsequent agreements and subsequent practice in relation to the interpretation of treaties".

We welcome the first well-structured and balanced report of Professor Nolte, the Special Rapporteur for the topic presented to the Commission for further deliberations. We have read with great interest five draft conclusions being provisionally adopted by the Commission and related commentaries. Since the Commission is in a very early stage of the discussions I will provide some general remarks and point out issues which are of particular interest for my government.

We fully understand that interpretation of treaties is a complex interactive process every international lawyer is involved in. The provisions of the Vienna Convention on the Law of Treaties reflecting customary law provide general framework and guidance for interpreters of an international treaty. It is very important that the ILC has decided to address the issue of interpretation and we expect the Commission to provide States with substantial guidance, in particular how to interpret and apply Articles 31 and 32 of the Vienna Convention.

One of the most difficult tasks for each interpreter is how to place appropriate weight on various means of interpretation as foreseen in Articles 31 and 32 of the Vienna Convention. It is no doubt that subsequent agreements and subsequent practice constitute objective evidence of the understanding of the parties as to the meaning of the treaty and thus amount to authentic means of interpretation. Therefore it is essential to have common understanding of the meaning of these terms. In our view the Commission should elaborate more on the issue of how to assess relevance of different means of interpretation.

We find very helpful the Commission's attempt to elucidate the terms "subsequent agreements" and "subsequent practice" in a narrow sense under Article 31 of the Vienna Convention and a broader concept of subsequent practice falling within the ambit of Article 32 of the Convention.

The Commission makes a distinction between mandatory character of primary means and discretionary character of supplementary means of interpretation. We would welcome, if the Commission elaborates more on the relation between subsequent practice in a broader sense and other supplementary means of interpretation under Article 32 of the Vienna Convention, in particular *travaux préparatoires*. In general, it is understood that the subsequent practice serves as means to identify original intent of parties with respect to a treaty, however, the question arises whether or to what extent it may depart from or modify the original intent of the treaty drafters. In this regard, we cannot avoid one of the most crucial questions - whether the meaning of a term or provision in a treaty is capable of evolving over time.

It is commonly agreeable that the view of a single State does not make international law. However, we would like to raise another question. Is it possible to quantify the broader understanding of Parties to a treaty leading to the establishment of “subsequent practice”? The terminology of “vast majority of European States” in the case law of the European Court of Human Rights or “some examples from legislation in American countries” in the jurisprudence of the Inter-American Court of Human Rights do not clarify this issue.

Mr. Chairman,

In conclusion, I would like to express our sincere appreciation for the outstanding work of the Commission and Special Rapporteur Nolte and our intention further to contribute to the interesting dialogue on the topic under the discussion.

Thank you.