



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 VI and VII of the ILC Report, i.e. the topics Protection of the atmosphere and Immunity of State officials from foreign criminal jurisdiction. 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,

The way how the ILC deals with the topic **Protection of the atmosphere** continues to raise still some concerns. During previous sessions we have repeatedly expressed particular doubts with regard to this topic and we will not make any exception this year. Despite that we would like to express our appreciation to the Special Rapporteur Murase for his tireless effort in moving forward with the topic that he has demonstrated also in the preparation of his fourth report. However, the consideration of the topic during the current session of the ILC has proven once again our conviction that the topic is not developing in the right direction.

To avoid any misunderstandings, we would like to state clearly that Slovakia is a firm supporter of all international efforts to combat climate change and global warming and recognizing existing serious risks and challenges for humankind connected with climate change. We recognize also that atmospheric pollution and atmospheric degradation primarily contribute to the climate change. However, we are convinced that is not up to the ILC to address many policy issues that inflict broad range of socio-economic, development and scientific questions obviously falling outside the primary mandate of the Commission. Our concerns are based purely on legal considerations and in our view this is the only right approach. Legal approach shall be also for the Commission the most important, when faced with suggestions on the issue of developing or defining rules pertaining to the protection of the atmosphere.

As part of a general comment, I would like to point out that the present text of draft guidelines still lack a clear purpose. As stated in the preamble, draft guidelines are not to interfere with relevant political negotiations on climate change, ozone depletion and long-range transboundary air pollution, neither seek to fill gaps in treaty regimes, nor to impose on

current treaty regimes legal rules or legal principles not already contained therein. Underlining this particular statement, it is however not clear at all, what is then the intention of the Commission to achieve as a purpose through drafting set of guidelines containing merely a repetition of procedural obligations under international law, which are not object specific, i.e. are not applicable solely to the question of protecting the atmosphere.

Recalling our comments with regard guidelines provisionally adopted during the previous sessions, we would like to focus today on the issue of interrelationship, which was the subject of the current session, included in the provisionally adopted draft guideline 9. It is for us obvious that the Commission struggled with the content of the fourth report of the Special Rapporteur. We commend the work of the Drafting Committee that made improvements in merging draft guidelines proposed by the Special Rapporteur. The proposed concept of law on protection of the atmosphere undoubtedly did not receive major support because it is not based on realistic presumptions. Neither doctrine nor state practice supports the concept that norms of international law relating to the protection of the atmosphere create a separate branch of international law. It is therefore in our view somewhat superfluous to tackle separately with the question of interrelationship. It cannot be done without a danger to fall into purely academic debate without providing realistic practical solutions. Moreover, the issue is in our view sufficiently covered on general terms by the outcomes of the Commission's consideration of the topic *Fragmentation of international law*.

Turning to the specifics of draft guideline 9, we have to underline that the solution presented in paragraph 1 goes beyond our clear comprehension. It is highly unrealistic to expect that any conflicting obligations in international law can be solved through some – politically oriented – changes or variations in identification, interpretation or application of those rules. This is not in our view a right concept. At the same time we recall the relevance of existing rules of interpretation set forth in the Vienna Convention on the Law of Treaties (articles 30 and 31) together with the principles and rules of customary international law that are designed also to solve, mostly through interpretation, any conflicts in rules of international law. Therefore, paragraph 1 in our view contains some contradictions that might be misleading. We therefore suggest its deletion.

With regard paragraph 2 we would like to point out that the text as currently drafted states the obvious. It contains a general principle that extends international law and is pertinent to

developing new legal norms and rules in general. Every legislator's objective is to develop new rules in a harmonious manner. It is a basic concept of law. This is a particular demonstration of an existing problem in draft guidelines as currently drafted, namely an artificial endeavor to collect generally applicable norms and restating them without identifying specificities directly applicable to the protection of the atmosphere.

In paragraph 3 of draft guidelines 9 in our view the Commission tries to identify particularly vulnerable persons and groups. However, those groups particularly vulnerable to climate change may not necessarily be identical with persons and groups vulnerable to atmospheric pollution or atmospheric degradation. As an example – population of cities or people living in highly industrialized areas are much more vulnerable to effects of atmospheric pollution than groups or people living in remote areas, including low-lying coastal areas. We are strongly encouraging to revisit the concept in this particular paragraph.

Mr. Chairman,

I will now turn to the topic **Immunity of State officials from foreign criminal jurisdiction**. We would like to commend Special Rapporteur Escobar Hernández for the presentation of her report in 2016. At the outset allow me to present some concerns on how the ILC proceeded in procedurally solving the apparent deadlock in consideration of question of limitations and exceptions to the immunity *ratione materiae*. Although voting is a legitimate procedural tool, the ILC shall use it only as a last resort and only with extreme caution especially in highly politically charged questions. Therefore, we are not entirely convinced that the Commission was supposed to force the adoption of draft article 7 through recorded voting. In our view, the ILC should have continued the discussion and to explore further possible consensual solution. No one can realistically expect that division in the ILC with regard this particular draft article will go unnoticed in the General Assembly. The situation will make a potential consensual action of the GA with regard draft articles almost impossible.

Slovakia supports the concept of immunity *ratione materiae* of State officials from foreign criminal jurisdiction, as well as the existence in current general international law of limitation and exception to this immunity. We therefore support inclusion of draft article 7 on the limitation and exceptions, which in our view shall not go beyond core crimes under international law. It seems that this concept was reflected in the title of article 7, but we

continue to wonder, if original purpose, i.e. define limitations and exceptions, shall not be reflected in the title.

We strongly support the relationship between *ratione personae* and *ratione materiae* immunities with regards the exemptions in draft article 7, as explained in paragraph 3 of the draft commentary. We question however, whether this important concept should not be also reflected as a normative provision in draft articles.

With regard the question of listing the crimes under international law, we are leaning towards the approach chosen by the Commission. A clear list of international crimes will help to achieve legal certainty, although opens natural questions, whether the list reflects customary international law or is an attempt towards developing the law.

We are however convinced that the list shall not go beyond *de lege lata* international crimes and not to include crimes that are not firmly part of general international law or those that fall into a broader category of particular international crimes, namely crimes against humanity. With that in mind, we think that the Commission should review, based on those criteria, if crime of apartheid, torture or enforced disappearance shall be, for one or other reason, included in the list of crimes, for which immunity *ratione materiae* shall not apply. What also shall be taken into account is, whether the ambition of the ILC with regards article 7 is not redefining or rewriting the concept of crimes under international law.

We welcome the intention of the Special Rapporteur to deal in her sixth report to be presented at the next session of the Commission procedural provisions and safeguards. This will be an important issue to complement the material provisions adopted so far, and may be crucial for having workable and meaningful set of draft articles to be adopted and accepted by the States. We note further the intention of the Commission to complete the draft articles on first reading next year, however we call for caution not to proceed towards premature completion by any cost.

I thank you Mr. Chairman.