



S L O V A K I A

STATEMENT

by

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on the work of its seventy-first session (item 79)
Cluster II**

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(check against delivery)

Mr. Chairman,

In my today's intervention, I will address Chapters VI, VIII and X of the ILC Report, i.e. the topics of "**Protection of the environment in relation to armed conflicts**", "**Immunity of State officials from foreign criminal jurisdiction**" and "**Sea-level rise in relation to international law**". I thank the Chairman of the ILC for presenting the respective parts of the ILC Report to us on Monday.

Mr. Chairman,

Addressing first the topic "**Protection of the environment in relation to armed conflicts**", I would like to thank the Special Rapporteur Ambassador Marja Lehto for her second report and congratulate the Commission on the conclusion of the first reading of the draft principles.

Armed conflicts often cause significant harm to natural resources and the environment. These may have long-term and irreparable consequences. The means of warfare become more advanced. The effect of armed conflict on the environment can occur in new and more devastating manner. Therefore, we consider the topic as relevant for consideration by the Commission. However, seeing the set of 28 principles before us, we are hesitant, on the conceptual terms, with the provisional result. In our view more streamlined and concise set of principles, with a clear normative content, would be more useful for state practice. Unfortunately, the principles lack an overall normative coherence, since they consist of a blend of international environmental law and international humanitarian law restatements and mere recommendations *de lege ferenda*.

We are convinced that the draft shall be revisited to provide for a more concise, better structured set of principles, focusing rather on principles that primarily regulate protection of environment during armed conflict, thus avoiding restating on one hand well established rules and principles of international humanitarian law, or specifying generally applicable principles of international environmental law. We are convinced that such approach would contribute to a better clarity of the set of draft principles and their usefulness for States.

Reserving our right to provide our detailed comments to draft principles in writing, I will limit my comments now to some specific issues with regard to draft principles adopted by the commission at the current session.

With regard to draft Principle 9 on state responsibility, we have difficulties to understand the benefits of the para 1. We think it could potentially lead to some confusion with regard to the scope of the reparation for any environmental damage. We think that the issue of reparation can be easily solved within the general rules on state responsibility.

In relation to draft Principle 10, we generally welcome the substance of the principle. However, we are hesitant, whether more prescriptive language should not be used. We are also not convinced about the extension of the principle or obligation therein to the post conflict situations as well.

Slovakia is a staunch supporter of any kind of liability and reparations to be provided for harm caused. Nevertheless, in conformity with our general remarks on the topic, we do not think that inclusion of draft principle on corporate liability is appropriate and within the remits of the scope of the ILC work on this topic.

We appreciate that the draft principles specifically tackle situations of occupation, but call for moderate approach with regard to overly attention to the post-conflict situations beyond the protection of environment itself, e.g. devoting too much time and focus on remedial actions. It is also in this context that we are cautious about draft principle 24 and its scope. We would at least appreciate some examples of categories of information, on which the draft principle should apply.

Mr. Chairman,

Before addressing topic of **Immunities of States Officials from Foreign Criminal Jurisdiction** in substance, I would like to thank Special Rapporteur Madam Concepción Escobar Hernández for a comprehensive report which together with former 6th report covers procedural aspects of immunity. As well as last year, no new

articles have been adopted, except for the article 8 *ante* provisionally adopted by the Drafting Committee. Even though we would not like to see any premature completion of the topic, lack of progress seems regrettably apparent. We therefore support the plan to complete first reading in 2020.

Eight draft articles proposed by the Special Rapporteur were referred to the Drafting Committee, which due to time constraints did not manage to complete its deliberations. Our comments are therefore on the report of Special Rapporteur and the debate in the Commission. Overall, in order to achieve useful and meaningful set of draft articles on procedural aspects of immunity we would welcome more focus on existing State practice reflected therein. As such practice stemming from domestic laws varies, we consider it necessary that the draft articles on procedural aspects are not overly prescriptive. [In general, we support the inclusion of procedural aspects and safeguards into the draft articles as they contribute to the prevention of politically motivated or abusive exercise of jurisdiction against foreign State officials. Especially, with regard to exceptions of *ratione materiae* immunity as stated in draft article 7. We reiterate our concerns about the annexed list to draft article 7 going beyond *de lege lata* international crimes and including crimes that are not firmly part of general international law. With regard to this article's relation to procedural safeguards, we are of the view there are no specific procedural provisions or safeguards needed. It is in this context that we welcome the approach of the Drafting Committee in provisionally adopted draft article 8 *ante*.]

Procedural aspects of immunity were subject-matter also of the 6th report of the Special Rapporteur, Slovakia thus wishes to address all 8 proposed draft articles as whole. [We recognize differences between consideration and determination of the immunity even in the language used, however, in order to avoid potential ambiguity, we do not oppose applying more proper language.] We concur with Special Rapporteur that immunity should be considered as soon as forum State's competent authorities are aware that a foreign State official may be affected by a criminal proceeding. However, we are not convinced that it is indeed necessary to elaborate further on this as reflected in para. 2. In relation to para 3 we envisage some practical concerns on whether it is indeed possible only to consider and not also determine immunity before any coercive measure, as well as on understanding of coercive

measures. Illustrative list in the commentary would be appreciated. In relation to the determination of immunity, we argue that it does not necessarily have to be the courts to determine the immunity. This is not the case in Slovakia either. Therefore, broader approach on the relevant organs of the forum State in the determination of immunity should be applied.

Touching upon invocation of immunity, we are convinced it is not a procedural requirement for authorities of the forum State to consider and determine the immunity of the State or of one of its officials from jurisdiction. On contrary, authorities of the forum State should assess and decide *proprio motu* on the immunity of foreign State officials no matter the type of immunity. In this line, we interpret para 6 of draft article 10 as not requiring the forum State to invoke immunity *ratione materiae*, but preferably in context with para 3 of draft article 9 and draft articles 12, and 13. As para 6 of draft article 10 does not substantively concern invocation of immunity but rather determination of immunity, we think it should be systematically relocated to draft article 9 as para 4. In relation to para 2 of draft article 10, without prejudice clause seems inevitable, as we assert it cannot be to the detriment of the State of the official, if the immunity is not invoked without any delay.

Slovakia further notes with satisfaction that express form was taken as one of the condition for waiver of immunity. Taking into account para 3 of draft article 11, we do not consider waiver of immunity as a matter of mutual judicial or legal assistance, thus believe the diplomatic channels shall be given preference. Such change should also be respectively reflected in para 5 of the article by deleting first part of the sentence until comma. We also urge further considerations on irrevocability of waiver of immunity and on presumption that a provision in international treaty might represent *per se* an express waiver. Concerning the exchange of information, Slovakia welcomes para 6, but believes that reasons for refusal of a request for information should be devoted further attention.

In reaction to the future works, Slovakia discourages the Special Rapporteur from an analysis in any terms on the relationship of the present topic with international criminal jurisdiction, as it goes beyond the scope of the topic. We also do not favor addressing the question of dispute settlement mechanisms between the forum State

and the State of the official, as this might undermine the purpose of draft articles. Instead, concentration on best practices would be appreciated.

Mr. Chairman

Turning now to the topic **Sea-level rise in relation to international law**, we note its inclusion in the Commission's programme of work and the establishment of a Study group co-chaired by five distinguished members of the Commission. We welcome the agreement of the Study group on its composition, methods and programme of work, based on the three subtopics identified in the syllabus. We agree that sea-level rise is a pressing concern of the international community as a whole. At the same time we do recognize that for many states this topic should be dealt by the ILC on a high priority basis.

Although we are still convinced that the urgent questions connected with sea-level rise, including legal ones, should be more properly addressed in other multilateral fora, including the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP), we are looking forward with interest to the first results of the study group. Two issues seem to be of utmost importance in this regard. First, the appropriate final form of the outcome of the consideration of the topic seems now clearly to be an analytical study. Second, any outcome has to reaffirm the unified character of the United Nations Convention on the Law of the Sea (UNCLOS) and the vital importance of preserving its integrity.

I thank you.