



SLOVENIA

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STATEMENT

BY

Mr Borut Mahnič

**Head of International Law Department
Ministry of Foreign Affairs of the Republic of Slovenia**

Agenda item 79

**Report of the International Law Commission on the work of its
seventy-first session: Cluster I: Chapter IV: Crimes against humanity,
Chapter XI: Provisional application of treaties.**

74th Session of the General Assembly
Sixth Committee

New York, 29 October 2019

Mr Chairman,

Slovenia is pleased to address the work of the International Law Commission as reflected in the Report, with appreciation for the constructive contribution of its members at the seventy-first session.

Two topics will be addressed within the current cluster, namely Crimes against humanity and Provisional application of treaties. Slovenia is looking forward to the discussion on the ILC Report in the coming days, where it will present its views on the selected issues within the remaining two clusters.

Mr Chairman,

In the context of 'crimes against humanity', Slovenia wishes to express its appreciation to the International Law Commission and, in particular, the Special Rapporteur Shawn D Murphy for his extensive efforts on the topic, including for his fourth report, on the basis of which the Commission adopted an entire set of draft articles on the prevention and punishment of crimes against humanity.

With its longstanding commitment to the rule of law and combating impunity, Slovenia recognizes the particular importance of the topic at hand. Slovenia acknowledges that there is no specific treaty concerning crimes against humanity, in contrast to the existing obligations concerning war crimes and genocide. Although the definition of the crimes against humanity in its most current form can be found in the Rome Statute, Slovenia recognizes that the codification of the crimes against humanity in a special convention would help fill the existing codification lacunae in international law on a global level. Slovenia therefore hopes that the draft articles may serve as the basis for the conclusion of an international convention on the prevention and punishment of crimes against humanity.

Slovenia welcomes the thorough examination in the Special Rapporteur's fourth report of the comments and observations made by the states, international organizations and NGOs. The vast number of received comments reflects the significance of the topic. We note that a number of changes have been introduced into the draft articles, in order to reflect the views expressed on the topic. Although the examination of the topic in Slovenia is subject to inter-ministerial cooperation, which is yet to be concluded, we would like to make the following observations.

With respect to draft article 2 on the definition of crimes against humanity, we note that the definition of gender in previous paragraph 3, referred to in article 7, paragraph 3, of the 1998 Rome Statute, has been deleted due to numerous critical comments as to its outdated content, which fails to reflect the current understanding of gender in international human rights law and international criminal law. Slovenia shares the view that such definition of gender no longer reflects the current understanding of the notion and hence supports its omission with a view to allowing the term to be applied for the purposes of the present draft articles based on an evolving understanding as to its meaning.

Turning to draft article 13 on extradition, Slovenia sees merit in expanding paragraph 1, as proposed by the Special Rapporteur in his fourth report, in order to call upon the states to expedite their extradition procedures.

Concerning draft article 14 regarding mutual legal assistance, Slovenia welcomes the new paragraph 9 that envisages the possibility of entering into agreements or arrangements with international mechanisms established by the United Nations or by other international organizations, and that have a mandate to collect evidence with respect to crimes against humanity. The new paragraph 9 correctly takes into account the recently established relevant international mechanisms, including the IIIM mechanism for Syria and the mechanism for Myanmar. As has been noted by the Commission, such cooperation regarding punishment is important and would complement the cooperation between the states and international organizations addressed in draft article 4 in the context of prevention. It is precisely for the reason of ensuring cooperation between the states and other mechanisms tasked with combating impunity that Slovenia maintains that paragraph 9 should also refer to international criminal courts and tribunals. Just as some states require statutory authority or a formal framework in order to cooperate with international mechanisms, they might require such framework to cooperate with competent international criminal courts and tribunals. Therefore, Slovenia finds the reasoning for excluding international criminal courts and tribunals from the new paragraph 9 of draft article 14 unconvincing.

As one of the initiators of the MLA initiative, Slovenia would like to refer to chapter 3 of the Special Rapporteur's fourth report, which addresses the said initiative, i.e. the initiative for the adoption of the Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes.

The core group of the states leading the MLA initiative – Argentina, Belgium, the Netherlands, Mongolia, Senegal and Slovenia, supported by 69 states, continues concerted efforts towards the adoption of a modern framework for mutual legal assistance and extradition in cases of the most serious crimes under international law. In this context, Slovenia would like to inform that the 2018 MLA draft treaty text, referred to also in the Special Rapporteur's report, has since been revised. A new draft MLA treaty was prepared in October 2019.

Slovenia notes that the MLA initiative and the ILC's topic 'crimes against humanity' have convergent qualities, as highlighted by the Special Rapporteur in his last report; however, there are important differences between the two. In addition to the broader scope of the MLA initiative, which extends to the crimes against humanity, war crimes and genocide, and envisages the possibility of an optional extension to other serious crimes, the MLA initiative focuses on the practical usability of mutual legal assistance and extradition procedures. Its procedural provisions are thus considerably more extensive than are those of the ILC's draft articles on crimes against humanity. The draft MLA provisions aim to address the needs of the practitioners in greater detail. It is also for this reason that the MLA draft treaty contains 65 draft articles along with several draft annexes, as compared to the ILC's 15 draft

articles on the prevention and punishment of crimes against humanity and an additional annex. The main objective of the MLA initiative is thus developing a modern operational framework for efficient inter-state cooperation that will focus particularly on responding to the needs of practitioners.

Slovenia considers that both efforts are complementary in nature and that they seek to improve upon the existing international legal structures aimed at addressing international criminal justice. At the same time, we fully share the understanding that one of the overriding considerations should be the avoidance of diverging substantive treaty provisions. Indeed, the MLA initiative aims to achieve the greatest degree of complementarity, including with the provisions of the Rome Statute.

I wish to take this opportunity to invite all interested states and other participants to an MLA initiative side event that the MLA core group states are organizing on 29 October 2019 from 1:15 p.m. to 2:30 p.m., in conference room 12. The side event will be an excellent opportunity to present an important MLA initiative stage on the way forward and engage on the substance of the initiative with interested states and other participants.

Turning to the topic of 'provisional application of treaties', Slovenia continues to support the work by Special Rapporteur Juan Manuel Gómez Robledo. As an advocate of the need to ensure the practical use of any outcome in relation to the topic of provisional application, Slovenia welcomes and supports the inclusion of draft model clauses in the guide on that topic.

This delegation sees merit in commentaries being added to the model clauses to facilitate their interpretation.

With regard to specific draft model clauses, Slovenia is ready to submit a written proposal on draft model clause 1 and thus allow the states to complete the relevant internal treaty-making procedures before provisionally applying it. The latter is of particular interest to those states that have internal limitations on the use of provisional application. Such a provisional application mechanism is applied by the European Union in the field of air transport agreements, which partly fall under the competence of EU Member States.

Slovenia intends to provide further comments on draft model clauses in writing, together with its comments on the Guide itself.