



S L O V A K I A

STATEMENT

by

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Sixth Committee**

**Report of the International Law Commission
on the work of its seventy-second Session (item 82)
Cluster I**

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(check against delivery)

Madam Chair,

Allow me to begin with expressing our deep appreciation to the International Law Commission and its members for the report that has been presented to us. In particular, I would like to express my delegation's sincere gratitude to the Chairperson of the Commission, Ambassador Mahmoud D. Hmoud for his skilled leadership throughout the seventy-second session.

At this session, the Commission proceeded to conclude its work on two topics, namely, the **'Provisional application of treaties'** and the **'Protection of the atmosphere'** which is a remarkable achievement bearing in mind the disruption caused by the COVID-19 pandemic and the hybrid format employed at the session. The Commission, with the indispensable and invaluable support of the Codification Division, demonstrated the necessary degree of flexibility and adaptability, crucial for fulfilling its mandate in the field of codification and progressive development of international law under challenging circumstances.

Madam Chair,

With respect to **'Provisional application of treaties,'** I would like to commend Special Rapporteur Mr. Juan Manuel Gómez-Robledo for his sixth report and welcome the adoption by the Commission, on the second reading, of the Guide to Provisional Application of Treaties. Having considered the nature of the text adopted by the Commission and its intended purpose, the recommended course of action for the General Assembly seems to be a suitable one. It will enable the widest possible dissemination of the Guide and support practitioners when dealing with the subject. There is no doubt that it will also contribute to further harmonization of the practice and reduce the risk of divergencies. It is our view that the main value of the Guide lies in expressly specifying rules and understandings that are solely implied by the rather brief wording of Article 25 of the Vienna Convention on the Law of Treaties.

Notwithstanding the completion of the Commission's work, we would like to highlight some elements of our views expressed continuously at previous sessions of the Sixth Committee.

First, both the guidelines 3 and 4 specify the way of agreeing on the provisional application of a treaty. It is our understanding that, without prejudice to its specific form, a State in question has to give its explicit consent for a treaty to be applied provisionally. Consequently, while we agree that an act of an international organisation or international conference may constitute a legal basis for the provisional application of a treaty, its adoption must unequivocally reflect the consent of the States concerned.

Second, the guideline 9 on termination and suspension of provisional application contains two forms of termination, namely the termination by the treaty's entry into force and by the notification of a State of its intention not to become a party to the treaty. In this regard, we wish to point out that the paragraph 2 does not expressly address the temporal aspect of the notification of intention not to become a party to the treaty. As a result, a question may arise, whether the notifying State may determine unilaterally when the provisional application terminates. Moreover, in our view, the decision of a State to terminate the provisional application of a treaty itself should not be automatically considered as the notification by the same State of its intention not to become a party to the treaty.

Turning now to **'Protection of the atmosphere,'** I would like to thank Special Rapporteur Mr. Shinya Murase for his tireless efforts in pursuing this topic. In the course of previous debates in the Sixth Committee, my delegation expressed at several occasions its concerns about the general approach towards this topic. While we note that the Commission adopted, on the second reading, the draft guidelines, some of those concerns have not been fully addressed.

As a general remark, the Special Rapporteur and the Commission chose a highly abstract approach by simply restating often very rudimentary general rules or principles of international law that are not specifically applicable for the area of protection of the atmosphere. Elaboration on some difficult questions, all of which have been excluded from the material scope of the guidelines, in line with guideline 2 para. 2, may have provided some added value.

Notwithstanding our position on the draft guidelines, my delegation will not oppose action by the General Assembly, in line with the recommendation in para. 37 of the

report of the Commission. Rather than serving as a set with normative value, the guidelines may be potentially used as generic model clauses or provisions for future negotiations on this topic.

To draw some more general conclusions from the work of the Commission, the topic of the protection of the atmosphere is, in our view, an example of an issue that is not well suited for the consideration by the Commission. While the topic itself is indeed a very pertinent one, it can hardly be solved by the tools the Commission has at its disposal. Similar situations can be avoided by applying strictly the Commission's own recommendation on the criteria for the selection of topics.

Madam Chair,

Turning now to Chapter X of the report, our delegation welcomes the inclusion of the topic '**Subsidiary means for the determination of rules of international law**' in the long-term programme of work. This step is fully in line with the decades-long devotion of the Commission to addressing the rules pertaining to the sources of international law, as enumerated in Article 38 para. 2 of the Statute of the International Court of Justice. Bearing in mind the complexity of the subject and the actual workload of the Commission, this topic should be included in the programme of work only after the conclusion of the consideration of '**General principles of law.**'

Taking into account certain level of contentiousness of some topics, my delegation would prefer some restraint when it comes to the inclusion of new topics in the Commission's programme of work during the next session. A streamlined agenda of the Commission would enable a more profound exchange between the Member States and the Commission and result in substantial progress with respect to topics currently on the Commission's agenda.

Thank you.