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S L O V A K I A

STATEMENT

by

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(***check against delivery***)

Mr. Chairman,

In my today's intervention, I will address Chapters VI, VII and VIII of the ILC Report, *i.e.* the topics of **"Protection of the atmosphere", "Provisional application of treaties"** and **"Peremptory norms of general international law (*jus cogens*)."** I thank the Chairman of the ILC for presenting the respective parts of the ILC Report to us yesterday.

Firstly, I would like to thank the Special Rapporteur Shinya Murase for his tireless effort in pursuing the topic **"Protection of the atmosphere".** During previous debates in the Sixth Committee we have expressed several concerns over the general approach pertaining with regard to this topic. These still remain pertinent. We note that the Commission adopted on first reading set of draft guidelines consisting of a preamble and 12 guidelines together with commentaries. Thus the consideration of the topic is moving to its next stage.

Let me briefly comment on the three draft guidelines adopted by the Commission at the current session, dealing with implementation, compliance and settlement of disputes. Unfortunately, the Special Rapporteur and the Commission did not modify the highly abstract treatment of the topic, namely restating obvious and often very rudimentary general rules or principles of international law that are not specific for the protection of the atmosphere.

It is the well-known sovereign right of a state to choose forms of national implementation of its international obligations. Accordingly, it is of no added value to restate various options in realization of that right, as proposed in draft guideline 10. Similarly, in connection to compliance, the paragraph 1 of guideline 11 is in our view mere restatement of *pacta sunt servanda* principle. We can see some additional value in paragraph 2, which is building on some best practices of compliance taken from some existing treaty regimes.

In guideline 12 the Commission is simply restating the principle of peaceful settlement of disputes. With regard to paragraph 2, we consider that it is usually upon the relevant jurisdiction deciding the particular dispute to request or use the relevant expertise. Since the addressees of the draft guidelines are states, the relevance of this paragraph is somewhat unclear. Moreover, we think that what shall be of consideration to use in disputes of fact-intensive and science-dependent character are not experts but rather the relevant expertise. This seems to be a drafting problem.

As a last general comment concerning this topic, we see the potential value of the guidelines as generic model clauses or rather model provisions for various future agreements pertaining to the topic of the protection of atmosphere and not really being a set of standalone guidelines with normative content. This, in our view, should be taken into account during the debate on the final outcome of the topic.

Mr. Chairman,

Turning to the topic **"Provisional application of treaties"**, I would like to commend Special Rapporteur Juan Manuel Gómez Robledo for his fifth report. We note with appreciation the adoption on first reading of the whole set of 12 draft guidelines with commentaries thereto, as well as the decision of the Commission to transmit the draft guidelines to Governments and international organizations for comments and observations. We welcome the formulation of the title for the proposed final outcome of the topic as "*Guide to Provisional Application of Treaties*". We think it properly reflects its intended nature and purpose. We are of the view that the guide, after its completion, will serve for states as a useful tool. It will contribute to further harmonization of the practice and will reduce the risk of its fragmentation.

Mr. Chairman,

I would like to reiterate comments made last year. In our view, it is not necessary to define the scope of the guidelines. Instead, we think that it would be sufficient to keep draft guideline 2 on purpose and merge it with draft guideline 1. We also see some overlaps in draft guidelines 3 and 4, since they deal with, basically, the same issue, namely the way of agreeing on provisional application of treaties. Concerning draft guideline 4 sub-paragraph (b) we think that some precision is required, since in our understanding, the State has to give its explicit consent for the treaty to apply provisionally. Thus, all other means or arrangements, including resolutions of international organizations, necessarily have to include a positive consent of the State concerned to have the effect of provisional applicability.

Concerning draft guideline 9 on termination and suspension of provisional application, we understand that it 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. With regard to our recent national practice concerning notification of the intention not

to become a party as a form of termination of provisional application, I would like to mention two issues. First, we would welcome, if the respective draft guideline could address also the temporal aspect of such notification. The question is, whether it may be upon the notifying State to determine unilaterally when the provisional application terminates. Second, in our view the intention of a State to terminate the provisional application of a treaty does not always have to coincide with notification by the same State of its intention not to become a party to the treaty, as the paragraph 2 of draft guideline 9 presupposes.

In concluding, I would like to use this opportunity to express our gratitude for the elaboration by the Secretariat of the extensive study on practice of states and international organisations on provisional application of treaties. We will follow with great interest the future work of the Commission on this topic.

Mr. Chairman,

With regard to the topic "**Peremptory norms of general international law (*jus cogens*)**", let me thank the Special Rapporteur Dire Tladi for his third report and we encourage him to continue his hard work on the topic. At the same time, we would like to underline that the present topic encompasses a number of complex and difficult issues which require prudent approach and in-depth analysis. All issues surrounding peremptory norms should be therefore considered in a reflexive and cautious manner, with no rush.

Mr. Chairman,

Concerning the general approach to this topic, we note with some concern that several proposed conclusions are based merely on doctrinal opinions rather than reflecting the State practice. We acknowledge that the practice of States in respect of peremptory norms may not be sufficiently developed and it may not be easily ascertained. However, this should not lead to the abandoning the usual method of Commission's work.

We note that the draft conclusions proposed by the Special Rapporteur, at this stage, remain in the Drafting Committee. We therefore reserve our right to comment on individual provisions after they will be submitted by the Commission together with the commentaries thereto. It is our hope that, in the interest of an efficient and meaningful interaction between the States and

the Commission, States will have the opportunity to comment on this important work in all stages of the process and not only at the end of the first reading.

In concluding, we remain open-minded as far as the development of the illustrative list of the peremptory norms and its future inclusion into the outcome of the topic is concerned. Alternatively, an illustrative mentioning of peremptory norms may be useful as part of the commentaries to the individual draft conclusions.

I thank you, Mr. Chairman.