



S L O V A K I A

STATEMENT

by

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on the work of its Seventieth Session (item 82)**

Cluster III

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(check against delivery)

Mr. Chairman,

In my today's intervention, I will address Chapters IX, X and XI of the ILC Report, *i.e.* the topics of **Protection of the environment in relation to armed conflicts**, **Succession of States in respect to State responsibility** and **Immunity of State officials from foreign criminal jurisdiction**. I thank the Chairman of the ILC Mr. Eduardo Valencia-Ospina for presenting the third cluster of the ILC Report to the Sixth Committee.

Mr Chairman,

Concerning the topic **Protection of the environment in relation to armed conflicts**, we note with appreciation the first report of the Special Rapporteur Ms. Marja Lehto addressing the protection of the environment in situations of occupation.

Armed conflicts often cause significant harm to natural resources and the environment, which may have long-term and irreparable consequences. As the means of warfare become more advanced, the effects of armed conflict on the environment can occur in new or more devastating ways.

We concur with the views that the efforts of the international community should be primarily concentrated on effective implementation of already existing instruments of international humanitarian law. At the same time, we recognize that the legal regime protecting the environment and natural resources from unjustified damage has not been comprehensively addressed so far. Further examination of the topic should, in our view, therefore focus on identifying areas, where there is a need to fill *lacunae* relating to environmental protection in relation to armed conflicts.

We welcome the intention of the Special Rapporteur to elaborate further on the questions relating to the protection of environment in non-international armed conflicts and wish her success with her work on this topic.

Mr. Chairman,

Turning to the topic **Succession of States in respect of State responsibility**, I would like to commend the Special Rapporteur Pavel Šturma for his second report. Slovakia considers the topic to be an important one. We are convinced that its consideration can contribute to clarifying rules that govern the sort of legal consequences of internationally wrongful acts pre-dating State succession, namely the rights and obligations relating to reparation, which have not been fully implemented before the date of State succession. At the same time, bearing in mind the high complexity of underlining issues, we call for a cautious approach during the consideration.

We note the adoption, by the Drafting Committee, of a new paragraph to be added to draft Article 1. According to this new paragraph, "The present draft articles apply in the absence of any different solution agreed upon by the States concerned". We understand that this addition, proposed by the Special Rapporteur, was prompted by the desire to underline the subsidiary nature of the draft articles. It refers to agreements reached between the parties concerned with the view of the problem of State succession in mind. We have no difficulties with the content of this new paragraph, while we point out that the provision simply restates *lex specialis* rule.

The relevance or predominance of treaty provisions in relation to the present draft articles is, in our view, an issue broader than that addressed in the mentioned paragraph. An internationally wrongful act may consist in a breach of an international obligation deriving from customary international law, but it may also consist in a breach of a treaty obligation. The treaty in question may contain provisions on responsibility in case of its breach. If such a treaty, by virtue of the rules governing succession of States in respect of treaties, remained in force, its provisions on responsibility would eventually also be relevant for the successor State and other Parties to this treaty. The Gabčíkovo-Nagymaros case provides an example of such situations. In this case, Slovakia was a successor State of former Czechoslovakia in respect of the 1977 Treaty on a joint barrage project with Hungary. The Treaty contained provisions on the responsibility of the Parties in case of breach of treaty obligations.

We consider that the final drafting of Article 1 should encompass in some way also this type of treaty provisions and their relevance for responsibility for a wrongful act pre-dating succession of States.

In respect of draft Article 5, we agree with its content, because - among others - of the need to preserve consistency with the manner, in which the same subject matter was addressed in the Vienna Conventions of 1978 and 1983, as well as in the Draft Articles on Nationality of Natural Persons in relation to the Succession of States of 1999.

With regard to future work on the topic, we consider it important that the Commission remain focused on identification of solutions, which would assist States in their dealing with the non-resolved consequences of an internationally wrongful act pre-dating the occurrence of State succession. The Commission should not attempt to resolve the divergence of doctrinal views concerning the concept of devolution of secondary rights and obligations from the predecessor State to the successor State.

In this respect, we consider entirely appropriate the soft language used by the Special Rapporteur in draft Article 6 (4), namely that "an injured State may claim reparation [...] from successor State". However, we note that this approach is not consistently followed in other articles, where more rigid formulations - potentially inviting unnecessary doctrinal clashes - are used. I am referring to various parts of draft articles 7 to 12 where the terms such as "transfer", "assume" or "pass" are used. Concepts of "transfer" or "passage" of secondary rights and obligations presupposes the existence of a legal basis for such automatic devolution. We therefore encourage the Special Rapporteur to use in draft articles 7 to 12 the terminology consistent with that used in draft article 6 (4).

We will follow with great interest the future work of the Commission on this topic.

Mr. Chairman,

With regard to the topic **Immunity of State officials from foreign criminal jurisdiction**, we appreciate the submission by Special Rapporteur Concepción Escobar Hernández of her sixth report that addresses various procedural matters in relation to immunity (timing of the consideration of the immunity, the acts affected by the immunity, and determination of immunity).

In this regard, we regret that no new articles have been adopted at the current session. This topic has been included in the Commission's Programme of Work already in 2007. Six reports have

been submitted by the current Special Rapporteur so far. The lack of progress is therefore quite surprising.

We understand the sensitivity and complexity of the topic, as well as the significance of its practical impact. However, we are convinced that, with due regard to State practice in this field, a proper balance between the predicaments of State sovereignty and the fight against impunity could be found.

We hope that during the next session, the Commission will be able to move forward with the topic and to conclude the first reading of the complete set of draft articles on procedural aspects.

I thank you, Mr. Chairman.