



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-first Session (item 79)
Cluster I**

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(check against delivery)

Mr. Chairman,

Allow me to begin with expressing our warm congratulations to the International Law Commission and its Members for the Report that has been presented to us. In particular, I would like to express our delegation's sincere gratitude to the Chairperson of the ILC Professor Pavel Šturma for his competency in leading this year's session. At this session, the Commission has been able to conclude one important topic on second reading with a recommendation to adopt a Convention on the basis of the outcome of its work and further two topics on first reading.

Mr. Chairman,

My today's statement is to address issues in Cluster I, namely Chapters IV, V and XI of the ILC Report. Slovakia notes with sheer satisfaction that the Commission has completed its works on the topic of **Crimes against humanity** having adopted the set of 15 draft articles with commentaries on second reading. We use this opportunity to congratulate the Commission for the outcome that is genuinely suitable for immediate codification. The set of articles is carefully drafted with adequate commentaries. Thus, the final outcome of the topic fully meets our expectations we had at the beginning of the Commission's work. Slovakia, therefore, absolutely endorses the recommendation of the Commission to the General Assembly to proceed to elaboration of convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles. We have a preference for the second option, since a diplomatic codification conference is the most suitable forum for the elaboration of a convention on the basis of ILC draft articles.

Slovakia also adheres to the Commission's special tribute to the Special Rapporteur, Professor Sean D. Murphy for his extraordinary work and commitment to the topic, as well as devoted and tireless efforts. Especially, we appreciate the consistency of the approach with which the topic has been treated, still with due regard to the comments made by States, thus producing an outstanding and balanced outcome.

Besides, we give the Special Rapporteur credit for the 4th report, as well. The report demonstrates a significant amount of overlap between the MLA initiative and the

draft articles. Slovakia takes note with concerns of this analysis, as well as of the view of the Special Rapporteur that pursuit of both initiatives might be inefficient and confusing and risks the possibility that neither initiative succeeds. Nevertheless, we are still inclined to believe those two initiatives are to be complementary and we are determined to engage in procedural steps leading to adopting a new convention on prevention and punishment of crimes against humanity on the basis of the draft articles. We strongly encourage other States not to misuse the analysis and the view of the Special Rapporteur as a bar to proceed to the elaboration of the convention.

Mr. Chairman,

Turning to the topic of **Peremptory norms of general international law (jus cogens)**, my delegation commends the Special Rapporteur Dire Tladi and the Commission for the adoption of the draft conclusions with commentaries on first reading. We also welcome that the Commission has decided to transmit the draft conclusions to Governments for comments and observations and it is Slovakia's intention to submit the comments in due course.

At this point we can recall our statements from previous years, where we expressed conviction that the topic requires prudent approach and in-depth analysis and that all issues surrounding peremptory norms should be therefore considered in a reflexive and cautious manner, with no rush. Despite the warning signs from many delegations during the previous sessions of the Sixth Committee, the ILC and the Special Rapporteur boldly proceeded to adoption of the whole set of draft conclusion on first reading. Rushed outcome, while disregarding apparent divergent views of states with respect to a particular topic, may only hardly lead to a success.

We read with great interest the Special Rapporteur's fourth report with the proposed draft conclusion referring to a non-exhaustive list of peremptory norms. Slovakia has several times supported the idea of having the illustrative list. While still perceiving the list's potential added value to the Commission's work, we wish to underline that such a list should result from a careful, elaborated and inductive analysis of the States' practice and their legal opinions. The non-exhaustive list included in the Annex of the draft conclusions should mirror those norms that have been referred to

by the Commission over the decades. However, it remains unclear, and the commentaries do not provide any further guidance on that, what was the exact criterion for inclusion or non-inclusion to the list of a particular norm. Accordingly, we observe that only some of norms previously referred to by the Commission as *jus cogens* examples now appear in the list, others do not. Moreover, the manner in which some of the listed norms are labeled gives rise to terminological uncertainty, such as an ambiguous category of basic rules of international humanitarian law or not mentioning the prohibition of the threat and use of force. Lastly, it may seem too shortcut to merely reproduce the Commission's previous references without giving explanations, instead of thorough search for the *opinio juris cogentis* expressed by States. Even if not being draft articles, draft conclusions as well should balance the progressive development only in a moderate way.

Despite these concerns on methodology and phrasing related to the non-exhaustive list, Slovakia believes that the whole set of draft conclusions on peremptory norms could serve as a meaningful guidance for solving potential normative conflicts within international law.

Mr. Chairman,

Turning now to the Chapter XI of the report “**Other decisions and conclusions of the Commission**”, allow me first to congratulate the Commission and the Special Rapporteur on the topic **Provisional application of treaties** Juan Manuel Gómez Robledo for preparation of Draft model clauses on provisional application of treaties, which is annexed to the report. Five model clauses were presented to the governments for comments in advance of the commencement of the second reading of the draft Guide to Provisional Application of Treaties at the next session of the Commission. We think that model clauses can be a useful complement to the guide and can help states in developing their practice in this regard, at the same time not limiting the flexible and voluntary nature of provisional application of treaties. With regard to paragraph 2 of the draft model clause I, we would like to recall our observation from last year that 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, which is bases for the model clause I.

With regard to the future work of the Commission, we note that the Commission has decided to include in its long-term programme of work two new topics, namely **Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law** and **Prevention and repression of piracy and armed robbery at sea**.

We would like to highlight once again that in deciding to include a particular topic either in the long-term programme of work or subsequently in the actual programme of work, the Commission shall observe its own recommendation at its fiftieth session (1998) regarding the criteria for the selection of the topic. Although the Commission can also consider proposals for topics that reflect new developments in international law and pressing concerns of the international community as a whole, the criteria for topic selection have to be respected. In this respect, we urge the Commission to consider carefully the inclusion of any new topic and especially to provide for a detailed reasoning when deciding to include a topic in the actual programme of work.

Taking into account the actual workload of the Commission and a certain haste that has been present with respect to some topics, we would prefer not to include any new topics on the Commissions programme of work during the next session. Thus, the ILC can better focus on the completion of several topics and making further progress in consideration of those currently in the programme of work.

I thank you.