

SLOVENIA



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Mr Chairman,

At the outset, allow me to congratulate you on your election as Chairman of this year's Sixth Committee session. Let me also pay tribute to the Chairman of the 65th session of the

do, in fact, wait 12 months for the reservation to be established before they treat the author of a reservation as a contracting State to the treaty in question.

With your permission, Mr Chairman, in addition to reservations to treaties, we would also like to address some other chapters of the Report since my delegation will deliver only one statement under this agenda item.

Mr Chairman,

Allow me to briefly turn to the topic of the Protection of persons in the event of disasters (Chapter VI of the Report). Slovenia has addressed this topic regularly in previous sessions of the 6th Committee and again, we would like to commend the impressive progress made by Special Rapporteur Mr. Eduardo Valencia-Ospina and the Commission. We believe that this is one of the most topical and acute themes under the scrutiny of the ILC, dealing with an important area of international law and practice which has not yet been codified in a comprehensive manner at international level. The eighteen draft articles prepared so far accord with the main aim of the Commission's endeavour. The latter is based on the protection of disaster victims, their lives and basic human rights, while at the same time remaining mindful of the principles of sovereignty and non-intervention. Continuing to maintain this delicate balance is of extreme importance if draft articles are to succeed and gain global acceptance in the future.

In commenting on this year's Sixth report of the Special Rapporteur and the prepared drafts of articles 5 ter and 16, we welcome the fact that the ILC has dealt with aspects of prevention in the context of this topic, including disaster risk reduction. This corresponds to numerous current activities of the international community in this field

Close cooperation is of paramount importance in reduction endeavours. We therefore support the explicit mention of this aspect of duty to cooperate in extended draft Article 5. We also believe that each individual State has a duty to reduce the risk of disasters by certain appropriate measures (draft Article 16). This duty is based on the contemporary understanding of State sovereignty, encompassing not only rights, but also the duties of States towards their

citizens, and providing that the affected persons should not suffer unnecessarily for the sake of sovereignty. The duty to reduce the risk of disasters is also in accord with States' obligation to respect, protect, and fulfil human rights, in particular the right to life, which is the most fundamental human right. The contemporary understanding of the right to life places an obligation on States to ensure respect for this right of individuals within their territory and within their prerogatives. *Inter alia*, this implies an obligation of States to take effective measures and necessary steps to ensure the right to life and other basic human rights, also in the aftermath of natural disasters. Specifically, "taking all necessary steps" means that a State has a duty to prevent disasters, to prepare for disasters within its territory, to take direct measures to minimise suffering immediately after a disaster and, absent a request for international humanitarian relief when national efforts are insufficient to protect the lives of victims of natural disasters. In this regard, we would like to underline that Slovenia, as acknowledged by the ILC, has already adopted national legislation with the aim of implementing global strategies to reduce risk.

Mr Chairman,

As regards Chapter VII: Formation and evidence of customary international law, we would like to commend Special Rapporteur Sir Michael Wood for his first report on the topic, which provides an excellent basis for our future work. We would also like to thank the Secretariat for drafting the Memorandum, with an overview of the existing findings of the Commission that could be particularly relevant to the topic. We are convinced the Memorandum will serve as a helpful reference document in future discussions on the topic.

The approach suggested by the Special Rapporteur regarding the scope and possible outcome of the topic has our support. While it has been widely accepted that the existence of a rule of customary international law requires there be 'a settled practice' together with *opinio juris*, it is much less clear how such a rule is to be identified in practice. In consequence, the proposed approach to the topic, focusing on the formation and evidence of customary international law, should fill in some of the lacunae in understanding and the application of customary international law, particularly on the part of non-international lawyers. It is also with

Let me now address Chapter VIII: Provisional Application of Treaties. We would like to congratulate Special Rapporteur Mr. Gómez-Robledo's First Report *on the provisional application of treaties*, in which he outlined the main elements of this mechanism and the issues to be discussed in the Commission. We also find the memorandum of the Secretariat on the *travaux préparatoires* with respect to Article 25 of the Vienna Convention on the Law of Treaties (VCLT) very useful.

In our view, the objective of the Commission should be to analyse as comprehensively as possible the mechanism of provisional application and its legal implications, so that States will be able to understand it better, both when they conclude treaties and agree to the mechanism and when they implement those treaties. As to the possible outcome of the consideration of this topic, we feel that it is perhaps too early to decide whether guidelines, model clauses or some other form of outcome would be the most appropriate, as this will depend on the future work on the topic.

We would like to propose that the Special Rapporteur considers another aspect of provisional application. The Vienna Convention on the Succession of States in relation to Treaties, concluded after the VCLT, contains article

as the Special Rapporteur himself recognised, legal concept with its accompanying international consequences. In this regard, it would be useful to include in the analysis the recent arbitral practice in the context of the Energy Charter Treaty.

Second, we are reluctant to ascribe great significance to the change in terminology from "provisional entry into force" to "provisional application", not least because this seems to appear from the *travaux préparatoires* with regard to the VCLT, in particular when comparing that on the draft article concerning *pacta sunt servanda* and that on Article 25, from which it is possible to conclude that the *pacta sunt servanda* rule applies to both concepts, which would mean that, from the perspective of this rule at least, two concepts are identical.

Third, although we agree that the main focus of the Commission's work on the provisional application should be on its analysis from the perspective of international law, we also believe that the decisions of States to use provisional application are often very closely related to their constitutional rules and procedures. This is apparent from the discussions of Article 25 at the Vienna Conference for the adoption of the VCLT, and our speculation that this is likely to emerge also from the results of the questionnaire which States should reply by the end of January next year. Thus, the Commission will probably be asked either to expressly exclude this internal legal aspect from its considerations or to set or decide how to include it. In the latter case, and in order to avoid an analysis of the internal law of States, which the Special Rapporteur correctly emphasised as not being the task of the Commission, the Commission could, for example, analyse the practice and implications of internal legal "limitation clauses" in treaties which have been drafted in different variations and whereby provisional application is

As noted in the contents of the topic included in Annex B to the Commission's report, crimes against humanity, unlike war crimes and genocide, are not covered by a treaty requiring States to prevent and punish such conduct and cooperate in achieving this end. This legal gap in the international law has been recognised for some time and is particularly evident in the field of State cooperation, including mutual legal assistance and extradition. We believe all efforts should be directed at filling this gap. Consequently, Slovenia has together with the Netherlands, Belgium and Argentina launched an initiative for the adoption of a new international instrument on mutual legal assistance and extradition for the effective investigation and prosecution of the most serious crimes of international concern by all jurisdictions.

It seems to us that in view of the said initiative and the relationship between a potential Crimes against Humanity Convention and the ICC's Rome Statute the ILC decision requires further consideration.

Mr Chairman,

In conclusion, I would like to express the gratitude of my delegation for the hard work