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STATEMENT
by the Representative of the Russian Federation,
in the Sixth Committee of the 72nd session of the UN General Assembly
on agenda item: “Report of the International Law Commission
on the work of its 69th session”

Mr. Chairman,

Allow me to thank the Chairman of the International Law Commission professor Georg Nolte for presenting the report on the work of the Commission at its 69th session. We also welcome in this room the Special Rapporteurs of the Commission.

The Russian delegation is following with great attention and interest the work

to international life which should be solid and stable in order to ensure the sustainability of the entire system.

There are various opinions in the academic community regarding the future directions in the development of international law and various NGOs call on the . We should not however ignore the fact that the states are the main subjects of development of international law and the Commission should take into account precisely the opinion of states, their practice and policy.

We believe that the Commission should demonstrate conse

Mr. Chairman, due to organizational reasons we would like to cover in one

This year the Commission adopted in the first reading the draft articles on the **“Crimes against humanity”**. The Russian delegation is carefully reviewing this draft and intends to present its comments within the established timeframe.

agenda: **“Protection of the atmosphere”** and **“Protection of the environment in relation to armed conflicts”**. These two issues have been long considered by the Commission which is working on their-related guidelines. However, the review of these principles leads us to believe that for the time being there has been no sufficient practice of states in the two designated areas that would prove the need for additional regulation. There are international instruments both in the first and the second topics, which in our view sufficiently regulate relevant relations among states. The addition of principles of general character on the need for cooperation, exchange of information and conclusion of additional agreement would hardly enhance the legal certainty.

Therefore, we would like to express doubts regarding the prospects of future work on the abovementioned topics.

adopted by vote in the Commission are not confirmed by consistent practice of national or international courts or national legislation.

We did not see either the agreement in the Commission on the issue whether it considered such exceptions to be *lex lata* or *lex ferenda* rule which also does not prove that this issue had been considered objectively.

Thus, we have to recognize with regret that during the consideration of this issue the objective approach was substituted by a subjective wish to create a new rule for prosecution of state officials. The questions whether international law contains exceptions to immunities and whether they should exist at all are not similar as the notions of immunity and impunity are not similar either.

It is not a question before the Commission as to how prosecute a state official but the question whether there are exceptions to the general rule of immunity of an official of one state from national (rather than international) criminal jurisdiction of another state (i.e. not the state on whose service this person works). It follows just from the name of this topic that there are other ways of prosecuting the perpetrator of a crime, for example in his own state in duly established international judicial institutions. Moreover, the state may waive the immunity of the state official in question.

We believe that the artificial creation of an international legal norm that does not reflect the reality and confronts continuous objections of states cannot be either codification or progressive development of international law and is inconsistent with the goals of the Commission .

Turning now to another important topic considered by the Commission **“Peremptory norms of general international law (*Jus cogens*)”** we would like, first of all, to thank the Special Rapporteur Mr. Dire Tladi for his report and his role in moving this topic forward.

We welcome the change of the name

will help to determine finally the scope of the report and put an end to differences regarding the existence of regional peremptory norms.

We also share the view of the Commission that Article 53 of the Vienna Convention on the law of treaties is the basis of its work on this topic. As a whole, the definition of *jus cogens* norms as it has been formulated in draft conclusion 3 (annexed to the report of the Chairman of the ILC Drafting Committee) goes in

mentioned the Gabcikovo-Nagymaros case. However on this case the Court recognized for Slovakia the existence of secondary obligations before Hungary due to the existing agreement between the parties whereby they agreed that Slovakia is the only successor to Czechoslovakia. The materials of the case prove that the responsibility of Slovakia for the acts by Czechoslovakia were not based on any general norm of succession in respect of international responsibility.

As an evidence of departure from the norm of non-transfer of responsibility the Special Rapporteur has also cited the agreements on the transfer of responsibility during succession. It is not clear however whether the parties when concluding such agreements proceed from the understanding that international law does contain the norm which records the transfer of responsibility during succession or the parties rely on the rule on the freedom of a treaty. In such case these agreements can hardly be considered as to confirm the existence of the norm on the transfer of responsibility during succession.

We took note that the report of the Special Rapporteur makes a reference to the disintegration of the Soviet Union as one of the examples of the succession of the second part of the XX century when as is known the Russian Federation became a continuator of the S5(t)w(y-3(d()-31(b(et)-3(h)-1BT1 T1 01 443.35 384()-74(S5(t)w)-371

participation); specifics of provisional applications based on unilateral declaration or