

ACTIVITIES OF THE SIXTH COMMITTEE OF THE UN GENERAL ASSEMBLY DURING ITS 79TH SESSION

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The 2024 session of the UN General Assembly's Sixth Committee (Legal Committee) cannot be described as "business as usual". On the contrary, after more than two decades, the Committee agreed to convene a codification conference to elaborate an international convention on the prevention and punishment of crimes against humanity. The Committee also adopted a resolution providing for the elaboration of another legally binding instrument – this time on the protection of persons in the event of disasters, possibly also through a codification conference. Both resolutions were adopted by consensus after dramatic negotiations. This outcome of the Committee's session is a breakthrough in the cycle of inactivity (the last codification conference convened by the Sixth Committee was the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in 1998). The Committee also considered other items on its agenda, including the Report of the International Law Commission. There were interesting debates on issues such as the Immunity of State officials from foreign criminal jurisdiction, Non-legally binding international agreements or the Succession of States in respect of responsibility. After considering all the agenda items allocated to it, the Sixth Committee recommended that the General Assembly adopt 16 resolutions and 12 decisions.

It has become established practice for the Legal Advisers of the Permanent Mission of the Czech Republic to the United Nations to provide an overview of the Committee's work in the Czech Yearbook of Public and Private International Law.¹ This article is a continuation of that practice, providing a brief summary of the developments in the Committee from a first-hand perspective.

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The opinions expressed in this article are solely those of the author, and do not necessarily correspond with the position of the Ministry of Foreign Affairs of the Czech Republic and do not bind this institution in any way.

¹ See for example, VÁLEK, Petr. The Activities of the Sixth Committee During the 66th Session of the UN General Assembly: Business as Usual? In: ŠTURMA, Pavel (ed.). *Czech Yearbook of Public and Private International Law. Volume 3*. Prague: Czech Society of International Law, 2012, pp. 293-319; ZUKAL, Marek and Jan MAIS. Activities of the Sixth Committee of the UN General Assembly during its 76th session. In: ŠTURMA, Pavel (ed.). *Czech Yearbook of Public and Private International Law. Volume 13*. Prague: Czech Society of International Law, 2022, pp. 386-401; ZUKAL, Marek and Anna MATOUŠKOVÁ. Activities of the Sixth Committee of the UN General Assembly during its 77th session. In: ŠTURMA, Pavel (ed.). *Czech Yearbook of Public and Private International Law. Volume 14*. Prague: Czech Society of International Law, 2023, pp. 452-464, and ZUKAL, Marek. Activities of the Sixth Committee of the UN General Assembly during its 78th session. In: ŠTURMA, Pavel (ed.). *Czech Yearbook of Public and Private International Law. Volume 15*. Prague: Czech Society of International Law, 2024, pp. 262-272.

Overview of the Sixth Committee's session in 2024

For the 79th session of the General Assembly, the Bureau of the Sixth Committee comprised representatives of Portugal (Chair of the Committee), Slovakia, El Salvador, Sudan (Vice-Chairs) and Singapore (Rapporteur).

Until the last minute, it was uncertain whether the tradition of adopting all resolutions by consensus would be upheld. This was particularly evident in the case of the resolution that would convene a codification conference on the prevention and punishment of crimes against humanity. Ultimately, however, all resolutions and decisions were adopted by consensus once again, thus preserving the long-lasting tradition of the Sixth Committee.

The fourth week of the session, traditionally called the “International Law Week”, was attended by many Legal Advisers from the respective Ministries of Foreign Affairs and the Report of the International Law Commission on its work during the 75th session was considered. The Czech Republic was represented by the Director-General of the Legal and Consular Section of the Ministry of Foreign Affairs and by the Director of its International Law Department. The Report of the International Law Commission sparked debates on topics such as Immunity of State officials from foreign criminal jurisdiction, Sea-level rise in relation to international law, Non-legally binding international agreements and Succession of States in respect of State responsibility. The Committee also heard the traditional address of the President of the International Court of Justice, who also presented the Court's annual report to the General Assembly.

Crimes against humanity

As mentioned above, the major achievement of the Committee's session was the adoption of a resolution convening the United Nations Conference of Plenipotentiaries on the Prevention and Punishment of Crimes Against Humanity. The adoption of the resolution marks the culmination of a complicated process spanning several years.

The International Law Commission (ILC) submitted its Draft Articles on the Prevention and Punishment of Crimes Against Humanity² to the Sixth Committee already in 2019. The ILC then recommended that an international convention be negotiated on the basis of the draft.³ Many States – including the Czech Republic – were ready to accept the ILC's recommendation at the time, but this course of action was opposed by a small but vocal minority of States. Over the following years, the Committee proceeded by incremental steps, including convening two resumed sessions dedicated exclusively to the topic of crimes against humanity in spring 2023 and 2024.

For the 79th session of the General Assembly, the resolution⁴ adopted in 2022 foresaw the Sixth Committee making a decision on the future course of action with respect to the ILC's draft and its recommendation. It was a priority for a large majority of States to adopt

² Draft articles on the prevention and punishment of crimes against humanity. 2019. Available here: https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf.

³ Report of the International Law Commission on the work of its seventy-first session. 2019. UN Doc. A/74/10, para. 47. Available here: <https://legal.un.org/ilc/reports/2019/english/chp4.pdf>.

⁴ Resolution of the General Assembly A/RES/77/249, adopted on 30 December 2022. Available here: <https://documents.un.org/doc/undoc/gen/n23/004/85/pdf/n2300485.pdf>.

a resolution that would convene a codification conference. As in previous years, Mexico and The Gambia took the lead on this effort.

As early as July 2024, a draft resolution prepared by the representatives of Mexico and The Gambia was circulated. This draft resolution, which the Czech Republic supported as a co-sponsor, provided for a codification conference for three weeks in 2026, preceded by a 4-day Preparatory Committee meeting in 2025. It also provided for the participation of Sean D. Murphy, the former Special Rapporteur of the ILC on the topic of Crimes against humanity.

During the Sixth Committee's debate on the agenda item, Some States criticized the fact that a draft resolution had already been informally published in the summer, before the beginning of the Committee's session. Those opposed to the initiative to convene a codification conference included Russia, Cuba, Syria, Algeria, China, Belarus, Saudi Arabia and Iran. These States also criticised the planned involvement of the former ILC Special Rapporteur and the inspiration of the ILC's draft articles by the Rome Statute of the International Criminal Court. Some opponents proposed referring the draft back to the ILC – as provided for in article 23, paragraph 2 of the Statute of the ILC.⁵ They referred to the resolution of the General Assembly 989(X) of 14 December 1955 as a precedent (in the resolution, the General Assembly invited the ILC to “*consider the comments of governments /.../ in so far as they may contribute further to the value of the draft on arbitral procedure, and to report to the General Assembly at its thirteenth session*”⁶ – note that the General Assembly did *not* refer the draft back to the ILC at that time).

Following the Committee's debate, it became clear that achieving a consensual outcome would not be easy. It was also clear that the Chair of the Committee, in spite of Portugal being one of the frontrunners promoting the idea of convening a codification conference in the previous years, was keen to preserve the consensus, even if it led to an unsatisfactory compromise.

The co-facilitators from Mexico and The Gambia convened several rounds of informal consultations on the draft resolution. While the Czech Republic and many others defended the original draft resolution as submitted (quoting precedents from the past, for example, on the engagement of the ILC's Special Rapporteurs in codification conferences), several amendments to the original draft were proposed over the course of weeks. These included amendments by Russia and Iran, which, if adopted, would result in the draft being referred back to the ILC – a step that was unacceptable to the vast majority of States. Conversely, an amendment presented by Egypt on behalf of a group of States represented a more constructive approach, and the co-sponsors of the draft resolution were willing to engage constructively on it. The amendment proposed postponing the codification conference and also prolonging it so that it would comprise two sessions: 3 weeks in 2027 and 3 weeks in 2028; a working group of the Sixth Committee would prepare a basis for the negotiations at the conference.

⁵ “Whenever it deems it desirable, the General Assembly may refer drafts back to the Commission for reconsideration or redrafting.” [Statute of the International Law Commission – annexed to the resolution of the General Assembly 174 (II) of 21 November 1947, as amended. Available here: <https://legal.un.org/ilc/texts/instruments/english/statute/statute.pdf>].

⁶ Resolution of the General Assembly 989(X), adopted on 14 December 1955. Available here: [https://docs.un.org/en/A/RES/989\(X\)](https://docs.un.org/en/A/RES/989(X)).

The presentation of amendments by the group led by Egypt led the co-facilitators to elaboration of a revised draft resolution. This accommodated some of the amendments, albeit not fully. The revised draft resolution provided for the first session of the conference in 2026 and, “if necessary”, a second session in 2027. As the deadline for the formal submission of the final text of the draft resolution approached, the co-facilitators continued to try to find a consensual solution through bilateral conversations with the opposing States. The necessity to be ready to vote during the final meeting of the Committee was mentioned repeatedly. At the same time, Russia started conducting demarches in the capitals of some States, trying to convince them to join the opposition to the convening of the codification conference, a move that was not always appreciated by the New York-based Legal Advisers of the targeted States.

In the final stages of the negotiations, which were subject to time pressure due to the deadline for submitting draft resolutions, Palestine played an active role in trying to bridge the difference between the co-sponsors and (mainly) Russia. A compromise text was agreed with the group led by Egypt in the meantime: two sessions of the conference in 2027 and 2028, a Preparatory Committee meeting in 2026, use of the ILC draft as a basis for negotiations at the conference (but not exclusively), engagement of the former ILC Special Rapporteur, stressing the need to make every effort to adopt any outcome of the conference by consensus etc. Prior to the Committee’s final meeting on 22 November, the draft resolution had been co-sponsored by 98 States. In addition to Palestine’s efforts, the Chair of the Committee proposed (not for the first time) a compromise solution, only to be refused by Russia, as had happened several times during these negotiations.

The day before the final meeting of the Sixth Committee, when Russia was still threatening to call a vote on the draft, the co-sponsors agreed on the need to adopt the resolution by voting if necessary. This approach and determination were reconfirmed during the meeting of the EU Member States in the morning before the final meeting. Although there was no clarity about how the final meeting would go, the possibility of a vote was very real.

When the Committee began consideration of the draft resolution, which had been formally presented by the representative of Mexico, Russia took the floor to propose another amendment to the draft resolution and proposed that the meeting be suspended to allow for time for further negotiations. Mexico objected to the motion to suspend the meeting, after which the Chair should have called a procedural vote on the Mexican objection. However, the Chair chose to suspend the meeting anyway, in clear violation of the Rules of Procedure of the General Assembly⁷ (Rule 118). Russia’s strategy was to divide the group of co-sponsors by feigning a willingness to negotiate a compromise solution and thus preserving the tradition of consensus on the Sixth Committee. And the strategy was partly successful. Immediately after the meeting was suspended, the group of co-sponsors split into two factions: those willing to further negotiate with Russia, and those insisting on the draft resolution as amended following negotiations with the Egypt-led group. The split also occurred among the EU Member States, despite the determination to adopt the draft by a vote having been reconfirmed that same morning. Among the EU Member States, Italy, Germany, France, Spain, Austria and The Netherlands were willing to further negotiate in order to preserve

⁷ Rules of Procedure of the General Assembly. UN Doc. A/520/Rev.20. Available here: <https://docs.un.org/en/A/520/Rev.20>.

consensus. This split resulted in the abandonment of the EU's common position (which, by definition, represented the least common denominator of all EU Member States' positions) and enabled the Legal Advisers to speak in their national capacities. The Czech Republic (supported mostly by Luxembourg and Romania among the EU Member States and by Iceland and Guatemala among others) on the other hand strongly and vociferously advocated not negotiating with Russia any further, as there had been several weeks for constructive negotiations. The Chair's compromise proposal from several weeks ago, which Russia invoked, was the same one that Russia had previously rejected. Delegations did not receive instructions from their respective capitals on how to approach the changes presented in the draft resolution during these unexpected negotiations.

As mentioned above, the Russian strategy of causing a split among the co-sponsors was partly successful. The co-sponsors agreed to accept a very minor change to the draft resolution which they would present to Russia as the final offer in an attempt to preserve consensus. However, the strong opposition within the group of co-sponsors, of which the Czech Republic was one of the strongest voices, prevented further concessions from being offered to Russia and thus ensured that the original spirit of the draft resolution was preserved. Russia then accepted this final offer, only to reject it five minutes later, before finally accepting it again. The resolution convening the codification conference was therefore adopted by consensus. Russia then dissociated itself from the consensus in its Explanation of Position, unscrupulously criticizing the co-sponsors for their approach to the negotiations. The representative of the Czech Republic also took the floor, responding to Russia's outrageous narratives and egregiously *mala fide* negotiations.

The final resolution,⁸ which was later adopted also by the General Assembly, provides for a codification conference to be held at the UN Headquarters in New York for three weeks in early 2028 and for three weeks in 2029 (unless otherwise agreed by the Preparatory Committee). There is also a possibility of an additional session, if necessary. The Conference will elaborate and conclude a legally binding instrument on prevention and punishment of crimes against humanity, based on a compiled text consisting of the draft articles and a compilation of proposals for amendments to these articles, submitted by governments. The Preparatory Committee will meet for two weeks in January 2026 and for four days in 2027 to discuss the methods of work of the conference, including its rules of procedure (while the Rules of Procedure of the General Assembly will be applied provisionally). The conference is mandated to exhaust every effort in good faith to reach agreement on substantive matters by consensus. The Secretary-General of the United Nations is invited to arrange for the attendance of the former ILC Special Rapporteur, as an expert.

Protection of persons in the event of disasters

The topic of "Protection of persons in the event of disasters" was another high priority for many delegations, in addition to Crimes against humanity. The Czech Republic adopted a more reserved stance on this topic than on the previous one, but did not block the efforts of a large number of delegations to convene a diplomatic conference on this product of the ILC.

⁸ Resolution of the General Assembly A/RES/79/122, adopted on 4 December 2024. Available here: <https://docs.un.org/en/A/RES/79/122>.

As in previous years, States were divided in the debate on the topic: supporters of negotiating a convention on the basis of the ILC draft⁹ on one side and States not supporting such an approach on the other (in this case, notably Russia, Pakistan, Kenya, Iran, Israel and others). The Nordic States (Denmark, Iceland, Norway, Sweden and Finland), as well as the United Kingdom and China, were rather neutral on the issue. There was a shift from the previous year in the position of the Netherlands and the CANZ group (Canada, Australia, New Zealand), which changed their initially negative position to a rather neutral one. During the debate, some States proposed specific modifications to the draft articles – for instance to clarify that the rules contained in the draft are intended to apply not only to natural disasters but also to human-caused disasters.

The Committee also discussed the Draft Articles on Protection of Persons in the Event of Disasters (DAPPED) in Working Group format. The Working Group was chaired by the Permanent Representative of the Philippines (who, despite having been elected *ad personam* as Chair of the Working Group, allowed his Deputy Permanent Representative to represent him) and the debate was divided into five thematic clusters. The discussion in the Working Group focused, for example, on the definition of disaster contained in DAPPED and the need to modify it. According to the United States, for instance, the definition is too broad and could include various political and economic crises. Some States questioned whether armed conflict could be considered a disaster within the meaning of DAPPED, and if so, what is the relationship of DAPPED to International Humanitarian Law. Others suggested that sea-level rise should be considered a disaster within the meaning of DAPPED. A large number of States emphasized the need to protect sovereignty when providing disaster relief, with only the United States explicitly stating that aid can be provided without consent (for example, if a failing State or a failed State is in question and consent cannot be obtained). Some States questioned the customary nature of the duty to cooperate in disaster relief. The discussion also revealed the need to elaborate on the general principle of cooperation by establishing forms of cooperation, such as joint capacity building, technology sharing, etc.

As with Crimes against humanity, facilitation on this topic is country-led, so facilitators are not appointed by the Committee's Bureau. This task has been undertaken by the Legal Advisers of Thailand and Jamaica. In collaboration with a select group of States, they drafted and presented a resolution proposing a diplomatic conference (two weeks in 2026 and 2027, respectively), preceded by a Preparatory Committee meeting in December 2025. Informal consultations were held on this draft.

As expected, a number of States opposed the proposal during the informal consultations, resulting in the submission of several amendments. For example, Russia proposed removing all references to the convening of a diplomatic conference from the resolution (effectively rendering the resolution completely meaningless if the Russian amendment was adopted). The United States suggested that the resolution should not necessarily decide on the elaboration of a legally binding instrument, but that the possibility of elaborating a non-legally binding instrument should also be considered. The Philippines then proposed that the Conference should be held in Manila instead of at the United Nations Headquarters in New York as had originally been contemplated.

⁹ Draft articles on the Protection of persons in the event of disasters. 2016. Available here: https://legal.un.org/ilc/texts/instruments/english/draft_articles/6_3_2016.pdf.

Following a series of negotiations, the co-facilitators presented a revised proposal that was co-sponsored by 92 States. The proposal included the possibility of a third session of the Conference in 2027, if necessary, in an attempt to reach a compromise. The Preparatory Committee meeting was to be split into two sessions, convening in February and April 2026. The Conference's deliberations were to be based not only on the ILC draft (DAPPED), but also on a consolidated text containing all the draft proposals submitted by States. Russia broke the silence procedure on this proposal. This eventually prompted the co-facilitators to draft an additional revised version, which was ultimately adopted by consensus.

The final version of the resolution¹⁰ does not contain a decision to convene a conference, as many States had originally intended. Instead, it contains a decision to produce a legally binding document by the end of 2027. The modalities and deadlines should be determined during the 80th session of the General Assembly. The Preparatory Committee meeting was replaced by a resumed session of the Sixth Committee in April 2026 (in Working Group format), with the aim of preparing a consolidated draft text to serve as a basis for further negotiations.

Progress was thus made towards negotiating a convention on the basis of DAPPED, although the decision on the form of negotiations (in particular whether they would be conducted through a diplomatic conference) was postponed until the following year.

Report of the International Law Commission on the work of its 75th session

As it does every year, the International Law Commission submitted a comprehensive report¹¹ on its activities to the Sixth Committee. It covers the various topics on which the Commission has been working, including, among others, the topic Succession of States in respect of responsibility, the continuation of work on the topic Sea-level rise in relation to international law, the second reading of the Draft Articles on Immunities of State officials from foreign criminal jurisdiction, and Non-legally binding agreements in international law.

The ILC has added two new topics to its long-term programme of work: Compensation for internationally wrongful acts and Due diligence in international law. While the former falls within the mandate of the ILC as defined in its Statute, the latter, like many topics discussed by the Commission, raises legitimate questions about whether the Commission will be fulfilling its mandate by working on it (i.e. preparing codification and progressive development of international law rather than producing academic studies and developing the science of international law). In addition to the Czech Republic, the inclusion of the first topic was positively welcomed by Lithuania, Latvia, Estonia, Portugal, Vietnam and Korea (on the other hand, the delegation of the United States expressed skepticism as to whether there was sufficient State practice on the topic). The latter topic received a similar response, with critics of its inclusion being joined by Russia, who argued that the concept of due diligence is an institution of common law systems that cannot be transferred to the civil law system, and Iran, who criticized the excessive breadth of the topic.

¹⁰ Resolution of the General Assembly A/RES/79/128, adopted on 4 December 2024. Available here: <https://docs.un.org/en/A/RES/79/128>.

¹¹ Report of the International Law Commission on the work of its seventy-fifth session, 2024. UN Doc. A/79/10. Available here: <https://documents.un.org/doc/undoc/gen/g24/141/48/pdf/g2414148.pdf>.

Regarding the topic of Sea-level rise in relation to international law, which the ILC is expected to complete in 2025 with the adoption of its final report, the issue of continuity of statehood in the event of loss of State territory due to rising sea levels generated the most discussion. The vast majority of States believe that the criteria set out in the Montevideo Convention on the Rights and Duties of States apply only to the creation of a State and not to the duration of statehood. The Czech Republic, Slovakia, France, Turkey, India, South Africa and Austria, however, are more reserved about this conclusion regarding the continuity of statehood. In relation to the topic of Sea-level rise in relation to international law, it is worth reiterating the doubt as to whether the ILC is not going beyond its mandate by working on this topic (the members themselves openly admit that in this topic the ILC is neither codifying nor progressively developing international law, but rather undertaking a “mapping exercise”).

Succession of States in respect of responsibility

As in previous years, the topic of Succession of States in respect of State responsibility was discussed within the context of the International Law Commission’s report. As in previous years, the discussion focused on the future of the topic.

Although the ILC had almost completed its work on the topic under the leadership of Professor Pavel Šturma, the Special Rapporteur at the time, the Commission concluded during its 75th session, after a Working Group meeting chaired by August Reinisch, that work on the topic should be discontinued with a report containing an explanation of the “difficulties that the Commission would face if it were to continue its work on the topic” and “the reasons for the discontinuance of such work”.¹² It was also decided that the draft report would be prepared by a Working Group under the chairmanship of ILC member Bimal N. Patel.

This development was not entirely unexpected. The ILC had already been moving towards discontinuing its work on the topic for some time, as evident from its report on the 74th session.¹³ At that session, the ILC decided not to appoint a new Special Rapporteur on the topic, instead convening a Working Group led by August Reinisch to discuss options for how to deal with the topic going forward.

While a number of States welcomed the ILC’s decision for various reasons, the Czech Republic was among those critical of the approach, strongly criticizing the ILC. To explain its position, it is sufficient to quote the Czech Republic’s statement made during the Sixth Committee debate:

“1.../ [T]his approach represents departure from the usual practice of the Commission. The report mentions, in para. 321, ‘lack of State practice relevant to the topic’. The question of sufficient State practice was also posed during an online meeting convened by the Chair of the Working Group in December 2023, as para. 312 of the report mentions. Yet, the question of whether there is sufficient State practice was considered by the Commission when it decided to include the topic in its programme of work in 2017. Then, the Commission had to consider the criteria for inclusion of topics on its programme of work and, judging by the outcome, the Commission clearly came to a conclusion that there was sufficient State practice. That State

¹² Report of the International Law Commission on the work of its seventy-fifth session. 2024. UN Doc. A/79/10, para 308. Available here: <https://documents.un.org/doc/undoc/gen/g24/141/48/pdf/g2414148.pdf>.

¹³ Report of the International Law Commission on the work of its seventy-fourth session. 2023. UN Doc. A/78/10. Available here: <https://documents.un.org/doc/undoc/gen/g23/164/09/pdf/g2316409.pdf>.

practice could hardly disappear over time. Therefore, we ask ourselves the question, whether the Commission was wrong then or whether it is wrong now. I.../ In any case, the General Assembly took note of the decision of the Commission to include the topic in its programme of work in 2017 (resolution 72/116). And in the previous debates of the Sixth committee on this topic, number of States supported the continuation of the work on the draft guidelines, which have been thoroughly discussed by the Commission and the Sixth Committee, and are almost completed. As a matter of general principle, the Commission should be guided in its work by the views of States and duly take into account the prevailing view of States on the way forward in respect of this and other topics. The members of the Commission often stress, and rightly so, that they are here, in the Sixth Committee, to listen to views of States. We are convinced that the prevailing view is clear – those delegations who intervene or in the past intervened on this topic, mostly support the finalization of the project, as originally planned. Therefore, we suggest that the Working Group and the Commission continue its work on the topic, finalize the first reading of the draft guidelines and submit them to the States for comments. We are convinced that the work on the draft guidelines could be finalized by the Working Group itself, just as it was done in the case of completion of the Articles on nationality in relation to succession of States, adopted by the Commission in 1999.”¹⁴

It is also noteworthy, how the views of some States that have long supported the completion of the project have changed in response to the ILC’s current decision. For example, Slovenia stated in 2023 that the draft guidelines should be completed as originally planned,¹⁵ only to support the ILC in its plan to discontinue the work in 2024.¹⁶ This demonstrated the formality of the Sixth Committee’s deliberations on the ILC’s reports and intentions. It also shows how States often accept the ILC’s conclusions uncritically, giving it often too much room to exercise its mandate (or, not infrequently, to overstep it).

As noted in the previous year,¹⁷ the approach of the ILC is not only a departure from usual practice, without any explanation, but also points to a deeper problem in its relationship with States. In spite of the fact that the Commission has consistently emphasized its special position among codification organs due to its intensive communication with States, and in spite of the fact that the Commission solicits States’ comments and views on various topics, this situation shows that the Commission simply disregards the views and preferences of the vast majority of States whenever they do not fit its intentions.

Immunity of State officials from foreign criminal jurisdiction

During its 75th session, the International Law Commission began the second reading of the Draft Articles on Immunities of State officials from foreign criminal jurisdiction.

¹⁴ Report of the International Law Commission on the work of its seventy-fifth session. Statement by the representative of the Czech Republic, Mr. Marek Zukal. 2024. Available here: https://www.un.org/en/ga/sixth/79/pdfs/statements/ilc/29mtg_czech_3.pdf.

¹⁵ Report of the International Law Commission on the work of its seventy-fourth session. Statement by the representative of Slovenia. 2023. Available here: https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/31mtg_slovenia_3.pdf.

¹⁶ Report of the International Law Commission on the work of its seventy-fifth session. Statement by the representative of Slovenia, Ms. Nataša Šebenik. 2024. Available here: https://www.un.org/en/ga/sixth/79/pdfs/statements/ilc/28mtg_slovenia_3.pdf.

¹⁷ ZUKAL, Marek. Activities of the Sixth Committee of the UN General Assembly during its 78th session. In: ŠTURMA, Pavel (ed.). *Czech Yearbook of Public and Private International Law. Volume 15*. Prague: Czech Society of International Law, 2024, pp. 262-272.

Claudio Grossman Guiloff was appointed as the new Special Rapporteur, succeeding Concepción Escobar Hernández. The Sixth Committee also addressed this topic in the context of its consideration of the Report of the ILC on its 75th session.

The discussion covered not only the draft articles already considered by the ILC on the second reading, but also the controversial draft article 7, which enumerates exceptions to immunity *ratione materiae* and has not yet been discussed on the second reading. The ILC is not scheduled to consider this draft article on the second reading until 2025. Some States, including Brazil, India, Russia, China and others, argue that exceptions to immunity *ratione materiae* are not part of customary international law (Russia even described the ILC draft as a “pseudo-progressive development of international law”). Conversely, several States support the list of exceptions proposed by the ILC and advocate including for the crime of aggression (explicitly the Czech Republic, Austria, Slovakia, Australia, Croatia, Spain, Portugal and Liechtenstein, among others).

There is no clear consensus on the scope of immunity *ratione personae*. According to some States, it applies only to the so-called Troika (Head of State, Head of Government and Minister of Foreign Affairs), while others state that it may also apply to other State officials (the United States, Belarus, Israel, India, the United Arab Emirates, Russia, Vietnam, Egypt).

Consideration of this topic will continue in 2025, when the ILC is expected to present the results of its continued consideration of the draft on the second reading.

Non-legally binding agreements in international law

The new ILC topic, Non-legally binding agreements in international law, has aroused great interest among States. Matthias Forteau, the Special Rapporteur on this topic, prepared a preliminary report¹⁸ for the ILC outlining areas on which the ILC could focus when addressing the topic. States provided detailed comments on the content of this report.

Some States took issue with the title of the topic itself. The Czech Republic and others questioned the use of the term “agreements”, arguing that this should be reserved for (binding) international treaties. Instead, they proposed the use of the term “instruments”.

The delegations generally agreed that the ILC’s product should not be prescriptive and that flexibility must be maintained in the area of non-binding instruments. Consequently, most delegations also supported the ILC’s intention to prepare draft conclusions instead of prescriptive draft articles. There was also discussion on whether non-legally binding instruments can have any legal consequences, as suggested by the Special Rapporteur in his preliminary report. For instance, the Czech Republic, alongside Italy and Ireland, argued that instruments cannot have legal consequences given their non-binding nature. Other states generally accepted (limited) legal consequences, but said it was necessary to wait for the outcome of the ILC’s work.

¹⁸ First report on non-legally binding international agreements. 2024. UN Doc. A/CN.4/772. Available here: <https://documents.un.org/doc/undoc/gen/n24/029/55/pdf/n2402955.pdf>.

Concluding remarks

A significant breakthrough was achieved at the Sixth Committee's 2024 session – after several decades, a codification conference was convened. This was achieved through a resolution adopted by consensus, despite some States (notably Russia) threatening to breach the consensus. This outcome provides hope that, with the appropriate methods and strategies, the process of codification and progressive development of international law through the activities of States within the Sixth Committee can continue, despite the current unfavorable international political climate. It will be interesting to see how things develop in the coming years. In 2025, a decision is expected on whether to convene a conference on the topic of Protection of persons in the event of disasters. The future of the Articles on the Responsibility of States for Internationally Wrongful Acts,¹⁹ a key ILC product completed already in 2001 to which the Sixth Committee regularly returns in three-year cycles, will also be discussed. Several States will undoubtedly seek to begin negotiating a convention based on this ILC product. In this case, the Czech Republic opposes this course of action for pragmatic reasons, as do a significant number of other States.

During the 80th session of the General Assembly, the Czech Republic will be represented in the Bureau of the Sixth Committee (as Vice-Chair), thus having the opportunity to influence the Committee's activities more than usual.

¹⁹ Responsibility of States for Internationally Wrongful Acts. 2001. Available here: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.