



67th Session
of the General Assembly of the United Nations
Sixth Committee

Agenda item 79

Report of the International Law Commission on the work of its 64th session

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New York, 2 November 2012

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Mr. Chairman,

As this is the first time my delegation takes the floor during this session of the Sixth Committee, let me express my sincere congratulations to you, Mr. Chair and to the other members of the Bureau upon your election.

We associate ourselves with the statements that was and will be delivered later by the representative of the European Union during this debate. At this point I wish to make some comments in national capacity on various issues.

I would like to express the Hungarian delegation's appreciation for the achievements of the Commission in its 64th session, to thank Mr. Caflisch for the eloquent leadership of the Commission and the Special Rapporteurs for their able guidance in the respective topics.

The Hungarian delegation has noted with satisfaction the work the Commission completed during the session by adopting a set of draft articles on the "Expulsion of aliens" and additional draft articles on the „Protection of persons in the event of disasters". On the other hand we would also like to underline the pressing importance of finalizing those issues which have been on the Commission's agenda for long time with moderate success. We believe that the Commission should concentrate its efforts instead on new topics in areas where new rules of international law are needed or the current rules need further development to adjust to the changes that took place in the last decades.

Mr. Chairman,

Turning to the specific Chapters of the report first I would like to address **Chapter IV** on the **Expulsion of aliens** and express our gratitude for the work of Special Rapporteur Maurice Kamto. Hungary will submit its detailed comments and observations on the draft articles adopted by the Commission on first reading to the Secretary General by the requested deadline, 1 January 2014.

At this stage I only wish to reiterate our position that we consider this topic controversial. In our view the doubts whether the draft articles could be a good basis of a future convention have not been dissolved. We also have concerns over finding the balance between the mere repetition of state practice on one hand and introduction of a new regime with high human rights' standards on the other hand.

At the same time we are pleased to see that Special Rapporteur Kamto devoted great attention to the EU's Return Directive which is the relevant EU legislation on this subject matter harmonizing the minimum standards of national legislations of more than 30 European states.

Turning to the specific draft Articles adopted at the 64th session by the Commission, we would like to make the following brief comments:

Hungary supports the principle contained in paragraph 1 of draft Article 21 according to which voluntary compliance with expulsion decisions should be encouraged. However, the

Articles did not take into consideration cases where the person concerned poses a threat to public order or national security. States should not be obliged to promote voluntary compliance in these cases. Therefore, we suggest the reformulation of this provision to emphasize that as far as possible appropriate measures should be taken by States to facilitate voluntary departure.

Paragraph 2 of the same Article should be amended to specifically reaffirm the right of States to use coercive measures in case of forcible implementation as long as these are in line with international human rights obligations and the dignity of the human being.

Finally, we believe that draft Article 32 on diplomatic protection is not closely related to the subject of the draft Articles and therefore we propose its omission.

Turning to **Chapter V on the Protection of persons in the event of disasters** the Hungarian delegation would like to express its appreciation to Special Rapporteur Eduardo Valencia Ospina for his work. We believe that the Commission has made substantial progress in this topic. We also recognise the fundamental difficulty involved in this issue, namely finding the right balance between the need to safeguard the national sovereignty of the affected States and the need for international cooperation in the protection of persons in the event of disasters.

In the view of Hungary the event of a disaster is primarily an issue of national concern, and providing protection is primarily the obligation of the Government of the affected state, where the Government and the competent authorities together with the citizens of the State are obligated to participate in the protection and restoration efforts. We also support the inclusion of the duty to provide assistance when requested, but the wording has to be careful. In this regard Hungary welcomes draft Article 5bis which further clarifies Article 5 on the duty to cooperate. In addition we support the observation of the European Union in this regard which suggests that the articles should mention the obligation of international actors to cooperate as well.

Hungary welcomes the refinements made to Article 13 on the Conditions on the provision of external assistance, especially the provision on the obligation of the affected state when formulating the conditions of external assistance to take into account the identified needs of the persons affected by disasters and the quality of the assistance.

Mr. Chairman,

Turning to **Chapter VI on the Immunity of state officials from foreign criminal jurisdiction**, the Hungarian delegation was pleased when the Committee included this topic in its agenda five years ago and follows it with a keen interest. We also wish to thank Special Rapporteur Concepción Escobar Hernandez for her work on this topic.

Let me now address the specific questions in Chapter III of the Report. The Commission requested States to provide information on their national law and practice concerning the following questions:

(a) *Does the distinction between immunity ratione personae and immunity ratione materiae result in different legal consequences and, if so, how are they treated differently?*

(b) *What criteria are used in identifying the persons covered by immunity ratione personae?*

There is no specific distinction in the Hungarian legal system between immunity ratione personae and immunity ratione materiae. For instance in the criminal cases involving a person who has privileges and immunities in Hungary based on the relevant provision of the Hungarian Criminal Code immunity is granted in the following way: *“the criminal indictment of persons enjoying diplomatic immunity and other immunity based on international law shall be governed by international treaties, and failing this, by international practice. In the issue of international practice, the declaration made by the Minister of Justice shall be governing”*. Laws and regulations on procedural matters in the civil and administrative field of law follow the same approach.

When an international treaty - like the Vienna Conventions on Diplomatic or Consular Relations - grants privileges and immunities to a person the case is straightforward since privileges and immunities as stipulated in the treaty in question will apply. There is no difference from a procedural standpoint between immunity ratione personae and immunity ratione materiae, the Hungarian authorities will ensure that the person involved shall receive a treatment according to his or her privileges and immunities based on international law. In practice it means that the Ministry of Foreign Affairs and the Ministry of Administration and Justice will make a determination of the privileges and immunities of the person involved on a case by case basis and inform the court or the administrative authority acting in the respective case accordingly. If the person's immunities are recognised in the specific case, the court or the administrative authority, upon receiving the proof of immunity from the respective ministry, will suspend the case immediately, and if there is international treaty in force between Hungary and the sending state on judicial cooperation, the case will be transferred to the courts or the authorities of the sending state.

Regarding Chapter IX on **The obligation to extradite or prosecute**, I would like to emphasise that Hungary was in agreement with those members of the Commission who believed that the harmonization of the different multilateral treaty regimes would have been a less than meaningful exercise. In our view the Commission should have pursued a systematic survey and analysis of State practice in this field to examine if a customary rule existed on a general obligation to extradite or prosecute for certain crimes. However, after the International Court of Justice has rendered judgment on the 20 July 2012 in Questions relating to the obligation to prosecute or extradite in the case between Belgium and Senegal, the future of this topic has to be re-evaluated. We believe that during its upcoming session the Commission should make a final decision and terminate its work on this topic as it has become an area of law to which the Commission cannot presently make more contribution than it has already done.

Regarding the topic of **Treaties over time**, as contained in **Chapter X**, Hungary welcomes the Commission's decision to change the format of the work on this topic as

suggested by the Study Group. We believe that the six additional general conclusions prepared by the Chairman of the Study Group have already shown great progress in the field, and they are steps to the right direction. Hungary encourages the Special Rapporteur to continue his work in the same manner.

Lastly I would like to assure the Commission that Hungary attaches great importance to the discussion of the new topics initiated by the Commission, namely the “**Provisional application of treaties**” and the “**Formation and evidence of customary international law.**”

In connection with the provisional application of treaties I would like emphasize that during the last decade the number of international treaties containing provisional application clauses has substantially increased. This also applies to Hungary which as a member of the European Union has become a party to numerous multilateral international treaties which were concluded between the EU, its member states and third countries. These treaties would usually enter into force after all parties have ratified them. This would normally require twenty-nine ratifications, but to reduce the time before the full application, these treaties in almost every case include a provisional application clause. Article 25 of the Vienna Convention on the Law of Treaties does not contain detailed rules on provisional application, and there are numerous issues which are waiting to be addressed in this regard. Therefore Hungary wholeheartedly supports the Commission’s plan, as envisaged in its work program for the present *quinquennium*, to elaborate the issue in draft articles/guidelines/model clauses, which would give much needed guidance to Member States.

Thank you, Mr. Chair.