

**PERMANENT MISSION OF DENMARK
TO THE UNITED NATIONS**

Statement on behalf of the Nordic countries by
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67th Session of the United Nations General Assembly

6th Committee

Report of the International Law Commission

New York
1 November 2012

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Mr. Chairman,

I have the honour to speak on behalf of the five Nordic countries Finland, Iceland, Norway, Sweden and my own country Denmark on the three agenda items; “Expulsion of Aliens”, “Protection of persons in the event of disasters”, and “Protection of the environment in relation to armed conflicts”. I will address the agenda items in the order just mentioned.

[Nordic statement on “Expulsion of Aliens”]

Firstly, turning to the issue of Expulsion of Aliens, allow me to thank the ILC and Special Rapporteur Kamto for the work undertaken in regard to this agenda item. We now have 32 draft articles before us to comment on. The Nordic countries will submit written comments before the deadline of 1st January 2014, noting that this is foreseen to require extensive internal consultations in each of our countries, as the draft articles touch upon a wide range of different - and complicated - issues. I will therefore today limit myself to some more general observations.

The Nordic countries have in recent years commented on this topic in this Committee and have with some consistency held that we were not convinced that the Commission’s work on this particular topic was likely to be of much benefit to the Member States in developing and identifying the relevant rules. This is an area of law with significant and detailed regional rules, and we continue to question the usefulness of the Commission’s further work on identifying general rules of international law on expulsion of aliens.

The present draft has not changed this general approach by the Nordic countries even if it does contain a number of very useful elements of guidance. The decision at the appropriate moment in time as to the specific character of the outcome of this work of the ILC will be very important to us. I will revert to this at the end of my presentation.

I will submit three clusters of general comments: On the useful elements of the draft articles, on the question of the nature of the draft articles vis-à-vis international law and on a number of issues where the draft articles raise more questions than answers.

Mr. Chairman,

In general the draft articles with commentary contain a very useful description of the challenges in this area and of the different relevant bodies of international and – not least – regional rules and practices. The clear distinction in the articles and especially in the commentary, for example in regard to draft article 2. a., between expulsion and extradition is very clear and therefore very useful.

We also find it very useful – and indeed legally correct – to confirm in article 22, paragraph 1, that any State has the obligation to receive her own nationals.

If the Nordic countries should point to one especially important draft article which we at the same time fully support in substance it would be draft article 10. From the outset the issue of collective – or mass – expulsions was a driving factor behind this subjects ending up on the agenda of the ILC.

At the same time the commentary to this article is one example of my second point: are the draft articles expressions of current international law or an attempt to develop new international law? The Nordic countries in no way oppose the role of the ILC and of this Committee to undertake the latter, but it should be very clear to us all when we do one or the other. Another example is article 20, paragraph 2, which I will revert to.

My final point relates to some of the specific draft articles where the Nordic countries find it important already at this stage to raise some key concerns.

The first is in relation to article 6, paragraph 3 on the expulsion or returning of a refugee. As it noted in the last sentence in the commentary this article should be read in conjunction with articles 23 and 24 on when an alien may not be expelled. We believe that these fundamental limitations should be reflected in article 6 itself in order to avoid anybody reading article 6 as not imposing the limitations mentioned in articles 23 and 24.

Secondly in regard to article 20, paragraph 2 it is interesting to see a term – “fair balance between the interests of the State and those of the alien” – which originates from a regional court, to be introduced in a draft article of the ILC. The Nordic countries as Member States to the European Convention of Human Rights of course both adhere to and support the practice of the European Court of Human Rights. But at the same time we think it might be both necessary and useful to elaborate the term in the draft article itself, for example by including some of the criteria listed by the European Court for Human Rights without making it an exhaustive list.

Thirdly, draft article 23, paragraph 2, mentions the issue of diplomatic assurance without determining in the article or in the commentary when and under which circumstances such assurances may be legally sufficient and thus allow for the expulsion of an alien even to a State that employ the death penalty. This is a legally complicated and a politically very sensitive issue and should therefore either be dealt with in more detail – which clearly falls outside the scope of this agenda item – or through deletion of the second part of paragraph 2 and with a short reference in the commentary.

Finally, Mr. Chairman, the Nordic countries as a consequence of the expressed view do not believe it feasible or indeed desirable at this stage to attempt to develop the draft articles into legally binding norms. We would thus prefer that the end-result of the work of the ILC under this agenda item would be in the form of guidelines or principles and guidelines.

[Nordic statement on Protection of persons in the event of disasters]

Mr. Chairman,

I will now turn to the topic “Protection of persons in the event of disasters”. Firstly, I would like to express our appreciation for the work done by the Special Rapporteur, Mr. Eduardo Valencia-Ospina, on this topic.

At its last session the Commission considered the topic on the basis of the fifth report of the Special Rapporteur. The article by article compilation of comments made in the Sixth Committee provides a useful recapitulation of States’ views on this topic. The report focused on the question whether the duty of States to cooperate with the affected State includes a duty to provide assistance when requested by the affected State. The Special Rapporteur also elaborated further on the duty of cooperation, which was the subject of draft article 5, and considered the question of conditions that an affected State may place on the provision of assistance as well as the termination of assistance. The provisional adoption of the further six draft articles by the Drafting Committee shows good progress.

Mr. Chairman,

It is the primary duty of the affected State to ensure the protection of persons and provision of disaster relief. The State, on the territory of which the disaster has taken place, has the primary role in the initiation, organization, coordination and implementation of humanitarian assistance within its territory. In a situation where the affected State does not have the capacity or the will to protect and provide assistance to the persons affected by the disaster, there is a risk that the population within its territory remains without assistance. In this kind of situations it is fundamental that the affected State does not withhold external assistance offered. Conditions imposed by the affected State should first and foremost comply with international human rights law and core humanitarian obligations. We share the view with the Special Rapporteur that draft article 13 on the conditions on the provision of assistance would benefit from further detail in order to have greater practical value. The Nordic countries are of the opinion that the basic role of the affected State to ensure the protection of persons and the provision of disaster relief and assistance on its territory could be underlined more to find the right balance.

The Special Rapporteur elaborated further on the duty of cooperation by producing a new draft article A. We welcome the focus taken by the Special Rapporteur in his efforts to strike a balance between three important aspects: State sovereignty, the legal obligation of conduct of assisting States and relevance and limits of disaster relief assistance encompassing the various specific elements that normally make up cooperation on this matter. We share the concerns raised in the Commission on the use of the word “shall” in this article as well as on the feasibility of imposing obligations on non-State actors in this article.

The Nordic countries welcome the draft article 14 on termination of assistance while recognizing that further elaboration of this article may be needed. We are open to new language allowing repatriation of goods and personnel.

Mr. Chairman,

The Commission discussed also about the final form of the draft articles. At this stage the comments by Nordic countries are without prejudice to the final form thereof.

We welcome the intention of the Special Rapporteur to propose a draft article on the use of terms as well as to elaborate in his following report on disaster risk reduction, including the prevention and mitigation of disasters.

[Nordic statement on Protection of the environment in relation to armed conflicts]

Mr. Chairman, let me finish by addressing the third item on my list; Protection of the Environment in relation to armed conflicts.

We, the Nordic countries, reiterate our strong support for the topic Protection of the environment in relation to armed conflicts, which was included by the Commission in its long-term programme of work at its session in 2011 and we hope that the Commission will include it on its current agenda of work at its forthcoming session next year. As history shows, the environment usually suffers extensive destruction and degradation during armed conflicts and in their aftermaths. There is a need to clarify the obligations relating to protection of the environment in relation to armed conflict. We therefore encourage the Commission to take this important topic forward.

Thank you, Mr. Chairman.