

REPUBLIC OF POLAND
PERMANENT MISSION TO THE UNITED NATIONS



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Report of the International Law Commission

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S T A T E M E N T

by

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Mr. Chairman,

Distinguished Delegates,

I would like to express my sincere congratulations to the Chairman of the International Law Commission, Mr. Lucius Caflisch, on his presentation of the Report of the Commission from its sixty-fourth session. This year the International Law Commission opened its work on two issues of theoretical and, what is even more relevant, practical importance. I am referring to “Formation and evidence of customary international law” and “Provisional application of treaties”. My delegation also appreciates the reformulation of the topic “Treaties over time” to „Subsequent agreements and subsequent practice in relation to the interpretation of treaties”. Taking by the Commission such challenging issues relating to primary sources of customary international law and treaty law should undoubtedly be welcomed.

We would also like to underline the particular importance of two other topics examined by the Commission: “Immunity of State officials from foreign criminal jurisdiction” and “The obligation to extradite or prosecute” (*aut dedere aut iudicare*). It is worth reminding that they can and should be approached in the context of combating impunity, and restoring the rule of law.

In general we are satisfied with the richness and variety of the Commission’s agenda of the sixty-fourth session. Therefore, we share the opinion of other delegations that during its last session the International Law Commission has successfully fulfilled its statutory tasks.

Mr. Chairman,

Poland would like to express its deep appreciation for the work performed by the Special Rapporteur to the topic on “Expulsion of aliens”, Mr Maurice Kamto. This year Mr Kamto presented to the Commission the Eight Report and enabled to bring to a successful conclusion first reading of the draft articles on this topic.

The Report of the Commission consist of 32 draft articles with commentaries, which were subject to intensive work during last 5 years. The Commission’s work tries to reconcile on the one hand the right of States to expel aliens and on the other the limits imposed on that right by international law, including protection of human rights and the principle of non-discrimination. It is without doubt that States do have the right to expel aliens posing a threat to national security or public order, as defined in their domestic law. Poland supports the structure of the draft articles and would like to present it’s view on some specific issues.

First, we are of the opinion that expulsion and extradition are governed by separate legal regimes. Thus issues relating to extradition, particularly Article 13 *prohibiting of the resort to expulsion in order to circumvent an extradition procedure* should be excluded from the draft articles as they do not reflect the international practice.

Secondly, regarding Article 27 of the draft articles related to *suspensive effect of an appeal against an expulsion decision*, this issue should be treated with caution, due to the fact that different national legal systems provide a variety of responses to this problem. That is why the practice of States should be studied carefully to enable a general assessment of the legal character of the proposed norm. I would like to particularly draw attention to the fact that in accordance with article 90 of the Polish Act on Aliens of 13 June 2003, the decision on expulsion may be made immediately enforceable, if the continuation of residence of an alien would constitute a threat

to the state security, defence, public order or if it would be contrary to the interests of the Republic of Poland.

Thirdly, we support inclusion of draft articles 31 and 32 relating to international responsibility and diplomatic protection respectively, agreeing with the Commission and its Special Rapporteur that the regime on the responsibility of States for internationally wrongful acts and the regime on diplomatic protection are quite well established in international law.

Fourthly, we agree also with the Special Rapporteur that there is no need to link the expulsion of aliens with the issue of readmission agreements. Obviously states are free to conclude any agreements they consider necessary in this area.

Finally, although there is still work to be done, particularly in the context of evaluation of practice of States, Poland is of the view that expulsion of aliens belongs to these topics of Commission's agenda which, with appropriate modifications, can be considered as being ripe for codification.

Mr. Chairman,

Poland would also like to welcome the progress made by the Commission on the topic "Protection of persons in the event of disasters". Deliberations that have been conducted so far and the substance of the issue clearly indicate that they constitute a progressive development rather than a codification of the existing international norms., Therefore we are of the view that development of the framework principles for States and others actors engaged in a disaster relief could have much more practical value than draft articles. In this context we support the inclusion of duty to cooperate, humanitarian principles, respect for human dignity, as well as human rights and primary responsibility of the affected state.

Simultaneously we would like to express our doubts regarding Article 10, which envisages duty to seek humanitarian assistance by affected state. A question arises, in particular whether a state which do not seek external assistance would by that fact breach international law and what form of reparation would accrue from such a violation.

In conclusion, in our view, the Commission, when dealing with this topic, should take into account similar works conducted on other international fora, such as International Conferences of the Red Cross and Red Crescent and UN Office of Humanitarian Affairs.

Thank you Mr. Chairman,