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Agenda item 79

International Law Commission

Report on ILC's 64th Session

Chapter I – III – Introductory parts

Chapter IV – Expulsion of aliens

Chapter V – Protection of persons in the event of disasters

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Mr. Chairman,

I would like to begin my statement by thanking the Chair of the International Law Commission for the comprehensive presentation of the report on the last ILC session.

I would equally like to take this opportunity to express the appreciation of the Romanian delegation to all members of the International Law Commission for the work carried out during this session of changes, reflected by the inclusion of new topics on the programme of work and by the appointment of new Special Rapporteurs.

With regard to the items that make up the first cluster of our debate, my delegation underlines the following:

Expulsion of aliens

On the topic „*Expulsion of aliens*”, the Romanian delegation welcomes the draft articles with commentaries on this subject, adopted by the Commission on first reading as well as the Special Rapporteur’s eighth report, containing a survey of the comments expressed by the States and by the European Union, and presenting the final observations of the Special Rapporteur.

We express our gratitude to the Special Rapporteur, Mr. Maurice Kamto and to the Commission for their very significant contribution on this topic.

The Romanian delegation believes that it is extremely difficult, indeed, to find the right balance between the sovereign right of States to determine their immigration policies and the rights of the individuals subject to expulsion. The comparison between the initial proposals of the Special Rapporteur and the draft articles adopted by the Commission on first reading during this year’s session reveals significant changes, which reflect the various suggestions proposed since the topic was included on the agenda of the ILC. In this respect, we would like to welcome the openness of the Special Rapporteur, who took into consideration many of the different comments expressed by the delegations during the debates in the sixth Committee.

We equally consider that the texts of the articles adopted on first reading by the Commission are better structured and offer a clearer picture of the draft as a whole.

Turning to the substance of the topic, we share the view adopted by the Commission and the Special Rapporteur according to which all decisions of expulsion should be taken in accordance with the law and should clearly state the reasons on which such decisions are based, as well as the fact that these grounds should not be limited to public order or national security.

With regard to the articles dedicated to the prohibition of the expulsion of refugees (art. 6) or stateless persons (art. 7), they should be drafted so as to reflect the relevant provisions of the 1951 Convention relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons.

However, we believe that the inclusion of draft article 6, paragraph 2 is questionable. It appears to be progressive development rather than codification. In any case, one must also take into account the situation in which a person submits an application for recognition of the refugee status for the sole purpose of avoiding the implementation of an expulsion decision taken against that person.

As previously stated, we fully support the inclusion of a provision on the matter of disguised expulsion, as the conduct of a State, intended to provoke the departure of aliens from its territory, should be qualified as expulsion irrespective of its form. We note the importance of the relation between article 11 (disguised expulsion) and article 21, which deals with voluntary departure. We attach high importance to the notion of “free consent”, which appears in the commentary to article 11. Indeed, we would have preferred that this concept were included in the text.

At the same time, as regards draft article 27, while we understand the Commission’s approach in considering it progressive development of international law, we believe that careful reflection is needed on the subject of making a distinction between aliens *unlawfully* present in the territory of the expelling State and those who are *lawfully* present in the territory of the expelling State. From this point of view, the Romanian delegation believes that consideration is further due to analyzing whether

the benefit of the suspensive effect should only be granted in the case of decisions of expulsion taken against aliens lawfully present in the territory of a State.

After consulting the relevant authorities in the field, Romania will make its best efforts, to send, within the deadline indicated in the report, its comments with respect to the draft articles on the expulsion of aliens.

As far as the final form of the work of the ILC on this particular topic is concerned, the Romanian delegation believes that whether the text prepared by the Commission is ready for codification or it should be used as mere guideline, enunciating best practice in the field, is also a matter depending on the wide acceptance of these rules by States and the international community in general. We tend, for the moment, to consider more appropriate the elaboration of a set of guidelines on the issue of expulsion of aliens.

Protection of persons in the event of disasters

Coming to **Chapter V** of the report, and having in view that the development of the international law of disaster relief proves to be instrumental in responding to disasters and mitigating their consequences with the assistance of other States and international organizations, we have to appreciate and thank the Special Rapporteur Mr. Eduardo Valencia-Ospina and the Commission for the work undertaken up to now.

I would like to submit to your attention some comments on the draft articles provisionally adopted by the Drafting Committee and to stress that, in our view, the importance of cooperation in such circumstances should be better reflected, as well as the right balance that should exist between the sovereignty of the affected State and the facilitation measures that the affected State may grant to the assisting State and its personnel during the emergency situations, in particular the possibility in certain cases to derogate from the provisions of the national legislation. This cooperation between the affected State and the assisting State should be further highlighted, in our view, as far as the terms and conditions of such assistance are concerned.

Thus, with respect to article 12 concerning offers of assistance, we express concern with respect to *the right to offer assistance*, which might create confusion. There is no *correlative obligation of this right*. In our view, *there cannot be an obligation to receive assistance*.

In this context, we think that article 13 and 14 that refer to the right of the affected State to impose conditions on the provision of assistance could be further elaborated in order to put forward more the perspective of cooperation among the affected State and the assisting entities, the consultations they should carry out as regards the scope and the type of assistance, the identification of the needs of the persons affected by disasters, other measures to be taken by the affected State to facilitate the assistance.

As to Article 5 bis, it may be useful to make a reference among the forms of cooperation to the financial assistance that may be provided in some cases. Also, the forms of cooperation may not be limited solely to the forms mentioned in the article 5 bis leaving open the possibility of the States to agree upon other forms of cooperation. As regards the form of the outcome on this topic, I think this issue may be considered at a later stage having in view the final product reached by the work of the Commission.

The provisional application of treaties

The formation and evidence of customary international law

The Romanian delegation welcomes the inclusion of two extremely interesting topics, namely “*The provisional application of treaties*” and “*The formation and evidence of customary international law*”, to the current programme of work of the ILC. We would like to particularly thank Sir Michael Wood for his very well structured *Note* on the latter topic, which seeks the best ways to tackle this stimulating subject.

We also welcome that the Commission decided to change the topic *Treaties over time* in order to concentrate on subsequent agreements and, in our view more important, subsequent practice in the interpretation of treaties.

This concludes my remarks on these topics.

Thank you for your attention.