



UNITED STATES MISSION TO THE UNITED NATIONS

799 UNITED NATIONS PLAZA
NEW YORK, N.Y. 10017-3505

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67th General Assembly Sixth Committee
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Report of the International Law Commission
On the Work of its 64th Session

Expulsion of Aliens/ Protection of Persons in the Event of Disasters/Other Decisions

Mr. Chairman,

I would like to thank the Chairman of the Commission, Professor Lucius Caflisch, for his introduction of the Commission's report and congratulate him for his Chairmanship of the Commission this year. I would also like to congratulate the Commission for a productive 64th session and its diligent work, which has again provided this Committee with a wealth of analysis on important topics of international law. We are pleased to note that the Commission continues its useful practice of interaction with other international bodies and academic institutions through seminars and meetings, just as the writings and lectures of individual members help profile the work of the Commission to a broader public.

Mr. Chairman, I appreciate the opportunity to comment on the topics that are currently before the Committee and will in this intervention address the issues of Expulsion of Aliens and Protection of Persons in the Event of Disasters, as well as provide a few comments on chapter 12 of the Commission's report regarding Other Decisions and Conclusions.

Expulsion of Aliens

The United States appreciates the efforts of the International Law Commission and of Special Rapporteur Kamto, in particular, on the topic of Expulsion of Aliens, which has now culminated in the adoption on first reading of a set of 32 draft articles, together with commentaries. The issues addressed in these draft articles are highly technical and require further review by U.S. agencies and technical experts with responsibilities for the areas addressed by the draft articles. The United States plans to provide detailed comments before the Commission's second reading in 2014. In conducting our review, it will be important to focus on the extent to which the draft articles are in conformity with widely-adopted multilateral treaties, as well as well-settled principles of international law and domestic law and practice. Today I will offer some observations that are necessarily preliminary.

First, we continue to have concerns over several aspects of these articles that seek to augment broadly ratified conventions on human rights and refugees. While any draft articles on this topic should certainly recognize protections for individuals, they should avoid unduly restraining sovereign States' prerogative and responsibility to control admission to their territories and to enforce their immigration laws.

We appreciate the flexibility of the Special Rapporteur and the Commission as a whole in addressing concerns raised by member States up to now. In particular, we are pleased that extradition and surrender to an international criminal tribunal have now been excluded from the definition of expulsion under draft article 1. But we still have concerns with other aspects of the definition of expulsion, including certain omissions attributable to a State. We underscore our previously raised concerns regarding the prohibitions on expulsion under Part II. These provisions would seek to expand international obligations beyond well-settled principles of international law and extend protections in situations far beyond what we believe we could support, including with respect to the death penalty and treatment or punishment that does not amount to torture as defined by international law.

As the commentary recognizes and we have noted in the past, States may be obligated not to discriminate against persons on various grounds under the International Covenant on Civil and Political Rights and other treaties, but there is no obligation in any of those treaties not to expel them to a place where they would be threatened on such grounds. It is also important to note that, unlike Article 33 of the Refugee Convention, nothing in these proposed prohibitions on expulsion would recognize exceptions to non-refoulement protection for security reasons or on criminal grounds as a means to address dangers posed by an alien.

Accordingly, we remain concerned that these provisions have yet to strike the proper balance between the important goal of protecting aliens and the State's sovereign prerogative, responsibility and ability to control admission to its territory and to enforce immigration laws. We again thank the Commission and Special Rapporteur Kamto for their diligent and dedicated work and we look forward to continued collaboration on this subject.

Protection of Persons in the Event of Disasters

Mr. Chairman, with regard to the issue of "Protection of Persons in the Event of Disasters" The United States commends the Commission for the additional progress it has made on this important topic, including its work on draft articles 5bis and 12-15, which elaborate on the question of a duty to cooperate, offers of assistance, conditions placed on assistance, and termination of assistance. We further note the introduction of a new draft article A intended to elaborate on a duty to cooperate. We congratulate the Special Rapporteur, Mr. Eduardo Valencia-Ospina, for his continued, diligent contribution on this topic.

We appreciate the Special Rapporteur's ongoing efforts to ensure that the duty of States to cooperate set forth in draft article 5 is understood in the context of the principle that the affected State has the primary responsibility for protection of persons and provision of humanitarian assistance on its territory. The addition of article 5bis is helpful in

providing needed context to draft article 5 as to the forms that cooperation may take.

We have expressed concerns in the past regarding adopting a rights-based approach to this topic, particularly in addressing the relationship between the affected State and third States, intergovernmental organizations, and non-governmental organizations. We appreciate the efforts that have been made to accommodate this concern. With this in mind, it seems incongruous to refer in draft article 12 to the “right” of third States and others “to offer assistance”; a better formulation would be “may offer assistance”. Also, when it comes to considering further the newly proposed draft article A, use of the word “shall” in connection with the assistance categories elaborated seems inappropriate and contrary to the premise that no legal obligation exists to provide such assistance. An alternative to consider might be to fold these additional categories of assistance into the existing enumeration in draft article 5 bis and thus avoid the obligatory terminology. We remain of the view that the Commission would be better served by proceeding in this endeavor in a way that avoids the need for definitive pronouncements on these issue so as to develop a product that is of the most practical use to the international community in facilitating cooperation among all interested parties.

In general, we believe the latest draft articles make important progress in a number of areas. In past years we have expressed the belief that the Commission could contribute greatly to State efforts to plan and prepare for disaster relief efforts through a focus less on rights and duties and more on providing practical guidance to countries in need of, or providing, disaster relief. We are therefore pleased to learn that the special rapporteur intends to focus next on disaster risk reduction, including the prevention and mitigation of disasters, as well as on the very important issue of protecting humanitarian personnel. We look forward to his next report.

At the same time, the United States strongly supports international cooperation and collaboration in providing disaster relief.

Other decisions and conclusions

In conclusion, Mr. Chairman, I would like to commend the Commission for its diligent work in preparing the work program for the remainder of the quinquennium. The organizational work done by the Planning Group and the Commission as a whole is key to ensuring a continued effective organization of the work of the Commission and ensuring that the Commission focus on areas of international law where it can contribute the most.

In this context, let me note that we welcome the Commission's decision not to move the topic of "Protection of the Atmosphere" onto the Commission's current agenda.

An overarching legal framework for protection of the atmosphere is unnecessary; various long-standing instruments already provide sufficient general guidance to States in their development, refinement, and implementation of treaty regimes at the global, regional, and sub-regional levels. Moreover, an effort to extract legal rules from existing treaties and then to assert that they legally operate in contexts well beyond their original scope would be unhelpful and potentially very harmful. In our view, were the Commission to pursue this topic, it could severely complicate, rather than facilitate, sensitive ongoing negotiations in the field. We support the ILC's continued deferral of this topic and urge that it not be taken up by the Commission during this quinquennium.

Thank you, Mr. Chairman.