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Sixth Committee**

Agenda item 81

**International Law Commission
Report on ILC's 65th Session**

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**Speech delivered on behalf of Mrs. Alina Orosan
Director for International Law and Treaties
Ministry of Foreign Affairs**

New York, November 2013

Mr. Chairman,

In this last intervention of the delegation of Romania on this year's ILC report I will address all the remaining topics as indicated in the programme of work.

Protection of persons in the event of disasters

On Chapter VI - *Protection of persons in the event of disasters* - we commend the significant work of the Special Rapporteur, Mr. Eduardo Valencia-Ospina, and of the Commission on this important topic.

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 cooperation for disaster risk reduction should be better reflected, as well as the forms of cooperation.

This cooperation between the affected State and the assisting States, competent intergovernmental organizations and relevant non-governmental organizations should be further highlighted, in our view, as far as the terms and conditions of such assistance are concerned. 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 emphasize 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 and any other measures to be taken by the affected State to facilitate the assistance. Draft article 13 should also include, in our view, provisions related to the special needs of women and especially vulnerable or disadvantaged groups.

Draft Article 15 on the termination of assistance follows a procedural line, but we consider that it should be reflected better, at least in the commentaries, that the termination of the assistance should not be done at the expense of the needs of the affected persons in either of the cases, and especially when the termination is requested by the affected State.

We agree with the language in article 5 bis and to its open ended character.

Formation and evidence of customary international law,

We welcome the work of the Commission on the topic related to the formation and evidence of customary international law, in particular having in view the complexity and difficulty of such an endeavor and the practical relevance of the topic at a time when customary international law continues to play a very important role in spite of the

conclusion of a multitude of bilateral and multilateral treaties and the work of codification carried out in several areas of international law.

We thank Sir Michel Wood for his first report highlighting the possible outcomes of the topic, as well as the proposed program for the Commission's future work and we would like to underline our support for a practical outcome, in the form of conclusions with commentaries, serving as a guide for lawyers and judges involved in matters of international law.

We also appreciate the extensive work of the Secretariat encompassed in the Memorandum it prepared that provides an overview of the Commission's understanding and its previous work on the manner the customary law may be identified and the way it operates within the international legal system. It is obvious that further clarifications are needed as to the relation of the customary international law with treaties, with "the general international law" and with the general principles of international law, as well as to the interaction that may exist among them.

In our opinion, the Commission's work should focus on assessing this complex relation and on the identification of the formation and evidence of customary international law. It should approach only when necessary the issue of *jus cogens* as part of this topic.

As regards the methodology, the assessment of the State practice is essential in our view. Such practice leading to formation of a rule of customary international law should have representativeness and continuity and be distinct from acts of comity. We also support the view that the practice of international and regional intergovernmental organizations, as embodied in resolutions, declarations, decisions, recommendations may be taken into consideration while assessing the evidence of both State practice and *opinio juris*.

Provisional application of treaties

As regards the subject *Provisional application of treaties*, we extend our appreciation to the Special Rapporteur, Mr. Manuel Gomez-Robledo, for his first report, as well as to the Secretariat for the Memorandum prepared in relation to this topic.

We fully agree with the conclusions of the Special Rapporteur that the Commission should not be seen as encouraging or discouraging the recourse to this practice, but it should simply provide greater clarity regarding the legal regime of the provisional application of treaties.

Even if we share the view expressed in the report that provisional application of a treaty gives rise, in principle, to the same obligations which would arise upon the entry into force of the treaty, we believe that the provisional application of treaties should not be a substitute for completing timely the necessary legal requirements for the entry into force of a treaty, but should serve only as a very useful legal tool to be used exceptionally, when circumstances require an urgent application of the provisions of that treaty.

We also find appropriate that the outcome of the analysis of this topic should be the development of guidelines with commentaries to underscore the comprehensive legal effects, in term of treaty law, of the provisional application of treaties.

Romania has provisions in its *internal legislation on treaties* permitting, under certain strict circumstances, the provisional application, in total or in part, of an international treaty concluded by Romania. We will substantiate on such provisions in the written submission that we endeavour to provide to the Commission by the end of January 2014.

Protection of the environment in relation to armed conflicts

We welcome the initial consultations that have taken place within the Commission on the protection of the environment in relation to armed conflicts and the effort of the Special Rapporteur, Ms. Marie G. Jacobsson, in carrying these consultations.

While we agree with the temporal perspective approach of the Special Rapporteur as a methodological approach useful from making the topic more manageable and easier to delineate, we believe that environmental issues cannot be easily divided into clear categories. At the same time, we do not feel the need for separately addressing the effects of certain weapons on the environment.

We are ready to assist the Special Rapporteur in carrying out her work on this particular topic, and, as a first step, we will search for pertinent bilateral or multilateral agreements or relevant national legislation and case law pertaining to this matter.

The obligation to extradite or prosecute (aut dedere aut judicare)

With respect to the topic *Aut dedere aut judicare*, Romania would like to thank the Working Group and its chairperson, Mr. Kriangsak Kitticcharisaree, for the report elaborated on this issue, which highlights some interesting aspects and reviews the recent jurisprudence on the matter.

We consider this topic of particular importance, taking into account the need to combat impunity in general, and, hence, the imperative need of strengthening the inter State cooperation, and we encourage the Commission to continue its thorough consideration of the subject.

We note, in particular, the conclusion of the Working Group concerning the existence of gaps in the conventional regime governing the obligation to extradite or prosecute in relation to some of the crimes against humanity, war crimes and genocide and consider that this should be taken up as well in the consideration of the topic concerning the crimes against humanity.

The Most-Favoured-Nation clause

We welcome the continuation of work on this particular wide ranging topic, as well as the expansion of the study to those MNF type clauses included in the Headquarters Agreements concerning, in particular, the immunities and privileges granted to the representatives of States to international organizations. We would emphasize that there might be MNF type of clauses in such Headquarters Agreements concerning the granting by the home State to an international organization (and its personnel) that it hosts of the most favorable regime of privileges and immunities accorded to any other international organization (and personnel) hosted on its territory.

We look forward for the various reports under preparation by the study group and for the outcome of its progressive work on the MNF clauses in investment treaties.

Thank you.