69th Session of the General Assembly of the United Nations

PERMANENT MISSION OF CHILE TO THE UNITED NATIONS

Statement delivered by the Legal Director of the Chilean Foreign Ministry

HE Ambassador Claudio Troncoso R.

on

"Expulsion of aliens"

Item 78

Report of the International Law Commission

New York, 28 October, 2014

-Please check against delivery-

Mr. Chairman,

As I am speaking for the first time, I should like to begin by congratulating you on your well-deserved election to preside over this Sixth Committee. Your election recognizes you as an outstanding diplomat and jurist. It also recognizes the contribution of your country to the strengthening of international law.

I also greet the other members of the Bureau.

I should also like to congratulate the Chairman of the International Law Commission, Mr. Kirill Gevorgian, on his excellent presentation on the work done by ILC during its sixty-sixth session.

I believe that all of us who have studied the ILC report will agree that its work at that session has been really fruitful. The Commission adopted on second reading an important report on "Expulsion of aliens"; and it adopted on first reading a set of 21 draft articles on "Protection of persons in the event of disasters". It also made progress in the consideration of several other matters and I shall refer to some of them later in another statement.

I should also like to note that the Commission's Planning Group decided to add two very important new topics to its work programme: "Crimes against humanity" and "Jus cogens". Our delegation welcomes these additions.

There is no doubt that expulsion of aliens, which the Commission has been considering for a decade and successfully concluded this year, will be one of the main topics that the Sixth Committee will discuss on this occasion, meaning that the General Assembly will have to decide at this session on the treatment and destination of this report.

In this connection, we should first like to congratulate the Special Rapporteur, Maurice Kamto, on his excellent work. Praise is also due to the members of the International Law Commission, to the Secretariat for its ongoing and effective support for the work of ILC and for the preparation of well-documented studies on this subject, and to the Governments which at the time made useful proposals or observations on the periodic reports submitted by the Commission.

The report finally adopted by the Commission, which we are considering on this occasion, compiles State and inter-State practices concerning expulsion of aliens, as evidenced by national laws and decisions taken by the administrative and judicial authorities of various States, as well as by the relevant rules of international law, adopted in instruments at the global and regional levels, and by arbitral awards and rulings of international tribunals, such as the 2010 judgement of the International Court of Justice in the case of Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), frequently cited in the report.

The 31 draft articles not only incorporated customary *lex lata* rules but also include *de lege ferenda* elements whereby certain subjects concerning expulsion of aliens have been gradually developed very cautiously and through the broadest possible consensus.

Traditionally this topic had been considered as being within the domestic jurisdiction of States. However, the emergence of international human rights law has meant that today the powers of the relevant national authorities are not absolute or entirely discretionary as regards expulsion of aliens and that, to a great extent, they now cannot disregard rules derived from international human rights law.

In this connection, the Supreme Court of Chile recently issued a ruling in a related case. It concerned a decision to expel a female national of a country from our region. The decision was appealed to the highest court in the country, which granted the *amparo* petition, based on the protection of the family enshrined in international treaties, since the expulsion would have prevented the woman from caring for her two minor children residing in Chile.

One of the merits of the draft articles which we are analyzing is precisely that, in addition to reaffirming the right of a State to expel an alien from its territory, they also state that the rules on human rights, as established in international treaties, are applicable.

Since these draft articles were adopted by the International Law Commission on second reading and since we believe that they reflect State practice, my comments on this occasion will be limited to supporting certain propositions contained in the draft articles, adding some further considerations and making some comments on certain very specific aspects for the record.

Regarding Part One, we should like to reiterate our congratulations to the Special Rapporteur and the Commission on the precision and legal rigour with which the first five draft articles have been prepared. Draft article 4 establishes the important principle that an alien may be expelled "only in pursuance of a decision reached in accordance with law". This requirement had already been established in article 13 of the International Covenant on Civil and Political Rights and in regional instruments, for example in article 22, paragraph 6, of the American Convention on Human Rights. We also welcome the inclusion of draft article 5, which specifies that any expulsion decision must state the ground on which it is based, that the ground must be provided for by law, that the ground must be assessed in good faith and reasonably and that the ground must not be contrary to the State's obligations under international law.

These provisions in draft articles 4 and 5 may prove important for national courts, when they have to pronounce judgement on a decision to expel an alien that was not reached in accordance with law or that did not state the ground on which it was based.

We welcome and support the inclusion in Part Two of the draft articles of the various cases of prohibited expulsion. These prohibited cases concern refugees, stateless persons, deprivation of nationality for the purpose of expulsion, collective expulsion of aliens, disguised expulsion, expulsion for the purpose of confiscation of assets and expulsion in order to circumvent an ongoing extradition procedure.

All these cases of prohibited expulsion are clearly explained in draft articles 6 to 12 and the commentaries thereon.

On this occasion, we should simply like to express our doubts regarding certain aspects of draft article 8 and the commentary thereon.

Draft article 8 specifies that a State may not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or her. In this connection we should be interested to know the implication of this provision. Deprivation of nationality by a State does not automatically make the national an alien but makes him or her a stateless person, unless the national in question has dual nationality or multiple nationalities. We would therefore have preferred to keep the earlier wording of this rule.

In addition, it should be remembered that the practice followed by some States, especially those governed under a dictatorship, as happened in a not too distant past, was not to resort to making a national an alien but simply to expel him or her, denying that person all access to the most elementary due process. This may be why, in his first draft reports and with the support of many Governments, including that of Chile, the Special Rapporteur, Maurice Kamto, included in those early reports a rule expressly prohibiting expulsion of nationals.

The commentary on article 8 now states that the draft article (and I quote) "does not address the issue of the expulsion by a State of its own nationals [and deals] solely with the expulsion of aliens" (end of quotation). Technically this is correct. However, we would have now favoured the inclusion of a draft article prohibiting the expulsion of nationals from their own country, since such a rule could help to prevent this practice from ever recurring.

We also consider that the text of draft article 9 on prohibition of collective expulsion, meaning expulsion of aliens as a group, on the basis of an assessment of the particular case of each individual member of the group, is reasonable and appropriate.

Part Three of the draft contains 13 articles designed to protect the rights of aliens subject to expulsion. It is the cornerstone of the draft.

The vast majority of the rights of persons expelled or in the process of being expelled are an extension, applicable to their situation, of human rights previously established in international instruments such as the International Covenant on Civil and Political Rights, the Convention relating to the Status of Refugees and the Additional Protocol thereto, the Convention on the Rights of the Child, the Convention against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and various other regional instruments. Thus, since these rights are already guaranteed in previous treaties in existence, their inclusion in the draft article under consideration presents no major problems and my delegation strongly supports it.

Allow me, nevertheless, to make some brief comments on draft articles 14 and 18.

Draft article 14 concerns a fundamental right under current international human rights law: non-discrimination. This article establishes the obligation of the expelling State to respect the rights of the alien subject to expulsion without discrimination of any kind. It mentions as unacceptable grounds for discrimination race, colour, sex, language, religion, political opinion, national, ethnic or social origin, property, birth or other status or "any other ground impermissible under international law".

We believe that the concluding phrase in article 14 prohibiting discrimination on (and I quote) "any other ground impermissible under international law" (end of quotation) allows States such as Chile which do not permit discrimination on grounds of sexual orientation to include such discrimination as being unacceptable. This may prove important, since the most likely users of these draft articles will probably be the national administrative and judicial authorities of States required to decide on expulsions of aliens.

Regarding draft article 18, on the obligation to respect the right to family life, we would have preferred a more explicit wording recognizing the need to take family considerations into account as a factor restricting expulsions of aliens, as is the case in various national laws and rulings of national courts, such as the Supreme Court of Chile, to which I already referred.

However, we trust that the content of draft article 18 will also be a factor to be taken into consideration by the administrative or judicial authorities required to decide on expulsion of an alien.

The specific procedural rules, dealt with in Part Four of the draft articles, are also important. The most important rule is the one contained in article 26 listing procedural rights enjoyed by aliens subject to expulsion, with the exception of those who have been unlawfully present in the territory of the expelling State for a brief duration.

In general, the procedural rights mentioned in draft article 26 seem appropriate and reflect well-known rules concerning due process.

Lastly, Part Five of the draft articles refers to the legal consequences of expulsion. In addition to referring to the right of the expelled alien to be readmitted if it is established by a competent authority that the expulsion was unlawful, this Part establishes in draft articles 30 and 31 rules that were already embodied in international

law, such as the fact that the expulsion of an alien in violation of a rule of international law entails the international responsibility of the State. This has been established by various international tribunals, including the International Court of Justice recently in the Diallo case. And draft article 31 repeats the rule that the State of nationality of the alien may exercise diplomatic protection in respect of the alien in question.

Despite the observations or doubts that we have expressed about certain specific provisions contained in the draft articles (and in fact they are not numerous), we believe that this is an excellent text which will become part of the valuable contribution made by ILC to the codification and progressive development of international law.

This is important, especially as many States, such as mine, are increasingly applying international law as an integral part of the State's domestic legal order. Its administrative and judicial authorities will now have an appropriate text at their disposal when they have to decide on the expulsion of an alien.

In conclusion, we strongly support the recommendation of the International Law Commission that the General Assembly should adopt a resolution taking note of the draft articles on expulsion of aliens. The resolution should be widely disseminated and the draft articles should be included in an annex.

69th Session of the General Assembly of the United Nations

PERMANENT MISSION OF CHILE TO THE UNITED NATIONS

Statement delivered by the Legal Director of the Chilean Foreign Ministry

HE Ambassador Claudio Troncoso R.

on

"Protection of persons in the event of disasters"

Item 78

Report of the International Law Commission

New York, 29 October, 2014

-Please check against delivery-

Mr. Chairman,

My delegation will refer to the draft articles on "Protection of persons in the event of disasters", which is contained in chapter V of the report of the International Law Commission (ILC) under consideration and which the Commission adopted on first reading at its recent session.

The draft in question consists of 21 articles and is the result of the commendable work on this topic done since 2008 by ILC under the guidance and leadership of its Special Rapporteur, Eduardo Valencia Ospina, who has submitted seven comprehensive reports on the subject.

The Special Rapporteur has succeeded in identifying and describing existing practices. Combined with his broad training and experience in the area of contemporary international law, this has enabled him to propose solutions which accurately reflect the existing legal situation with regard to the protection of persons when a disaster occurs.

In addition, for the drafting of these articles, the Special Rapporteur has enjoyed the cooperation of governmental and nongovernmental agencies with experience in the area of the protection of persons in the event of disasters. These include the Office for the Coordination of Humanitarian Affairs in the United Nations Secretariat and the International Federation of Red Cross and Red Crescent Societies. Thus we have before us solid and well-founded draft articles. Dr. Valencia Ospina deserves our gratitude and congratulations.

The 21 draft articles that we are considering address the most important issues raised by the topic of protection of persons in the event of disasters. These include the definition of a disaster; respect for the human dignity and human rights of persons affected by disasters; the applicable humanitarian principles; the duty to cooperate and forms of cooperation; disaster prevention; the role of the affected State and its consent to external assistance; the conditions on the provision of external assistance; the termination of such assistance; and the relationship between the proposed rules and other rules of international law, including those concerning international humanitarian law.

As these subjects are very clearly explained in the commentaries, with which we largely agree, I see no need here to restate our position on each of the draft articles. Allow me, however, to highlight some points regarding the most significant parts of these draft articles.

We are glad that draft article 5 emphasized human dignity in the context of the response by States and international organizations to a disaster. Human dignity is the basic principle underlying the human rights embodied in international instruments, starting with the United Nations Charter itself. Now that the General Assembly will be taking note of the draft articles on expulsion of aliens, adopted by ILC on second reading, the need to respect the dignity of aliens subject to expulsion is also important.

The duty to cooperate is established in article 8, stating that States must cooperate among themselves, and with the United Nations and other competent international organizations. Since this is still an embryonic principle, we should have preferred a more explicit rule embodying the duty to cooperate with the State affected by a disaster. This principle of cooperation has been proclaimed in certain international instruments, such as General Assembly resolution 46/182, recognizing the magnitude and duration of many emergencies and stressing the importance of international cooperation to deal with emergency situations and strengthen the response of the affected countries.

Draft article 12 and other provisions assign to the affected State a basic role concerning the protection of persons and the receipt of relief and assistance when a disaster occurs in their territory. According to the draft, that State therefore has the primary role in the direction, control, coordination and supervision of relief and assistance and all this is simply the consequence of State sovereignty. However, to the extent that a disaster exceeds a State's response capacity, it has the duty to seek assistance from among other States, the United Nations or other competent international organizations, as stated in draft article 13.

Draft article 14 requires the State to consent to the provision of the external assistance offered. This would seem to be an essential provision of the draft: the affected State is in the best position to determine the severity of a disaster and thus decide whether or not to seek outside assistance or relief and whether to accept it or reject it.

Similarly, the conditions on the provision of assistance should be determined by the affected State.

In addition, in responding to disasters, States, the United Nations and the other international organizations have the right, as stated in draft article 16, to offer assistance to the affected State. The commentary even specifies (and I quote) that "the draft article is only concerned with 'offers' of assistance, not with the actual 'provision' thereof" (end of quotation). This commentary also notes that such offers are essentially voluntary and should not be construed as recognition of the existence of a legal duty to assist.

The draft articles on "Protection of persons in the event of disasters" conclude with two provisions referring to the relationship of the rules in the draft articles to other rules of international law. Article 20 provides that the rules in the draft articles are without prejudice to special or other rules of international law applicable in the event of disasters. All this reflects the principle of *lex specialis* and other well-established principles concerning the interpretation of different texts on the same subject.

For this reason, we do not understand why these same principles were excluded from article 21 dealing with international humanitarian law. The two systems – the one in the draft articles and the one embodied in international humanitarian law – are perfectly able to coexist. In the case of an armed conflict, it is true that the rules of international humanitarian law should preferably be applied; however, when the disaster is the result of an armed conflict, some of the rules in the draft article under consideration could well be

applicable, especially in view of the broad definition of a disaster given in in article 3 and principles such as those contained in article 7, to the effect that assistance and relief in response to a disaster should be based on the principles of humanity, neutrality and impartiality.

Mr. Chairman,

My country, Chile, has suffered serious disasters in the course of its history. We have experienced earthquakes – some followed by seaquakes – which are possibly the strongest and most devastating ever seen. We have always made efforts to relieve the resulting suffering and to rebuild the country in an efficient and timely manner. In doing so, we have also received generous assistance from many States and from various organizations, agencies and even individuals which have given us their help and disinterested cooperation. Similarly, when disasters have occurred in other parts of the world and especially in our region, Chile has assisted the victims of such disasters promptly and to the extent of its ability.

For this reason, we have from the outset supported the International Law Commission and its Special Rapporteur in their efforts to establish rules of international law to protect persons in the event of disasters.

The result achieved in these draft articles adopted on first reading is, in our opinion, an important first step towards regulation of this subject by international law. Reflecting the international law in force, these draft articles correctly assign to the affected State, in exercise of its sovereignty, the main and almost sole responsibility for regulating all the external assistance offered.

At the same time, however, those of us who wish to help to create greater global solidarity believe that, in the future, after this first step, rules can gradually be formulated so that third States and the international community as a whole can play a more active role in providing cooperation and assistance to persons who are victims of a large-scale disaster.

Mr. Chairman,

My delegation supports the proposal of the International Law Commission that the 21 draft articles should be transmitted, through the Secretary-General, to Governments, competent international organizations, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies for comments and observations by 1 January 2016.

Thank you.

69th Session of the General Assembly of the United Nations

PERMANENT MISSION OF CHILE TO THE UNITED NATIONS

Statement delivered by the Director of Legal Affairs of the Chilean Foreign Ministry

HE Ambassador Claudio Troncoso R.

on

"Other matters dealt at the ILC Report"

Item 78

Report of the International Law Commission

New York, 31 October, 2014

-Please check against delivery-

Mr. Chairman,

In my earlier statements, I referred to two sets of draft articles adopted this year by the International Law Commission (ILC) on Expulsion of Aliens and Protection of Persons in the Event of Disasters.

On this occasion, I should like to refer more generally and briefly to other parts of the ILC report.

I shall first refer to the topic "Subsequent agreements and subsequent practice in relation to treaty interpretation", contained in chapter VII of the report. ILC considered this topic in a Working Group chaired by Giorg Nolte, whom the Commission last year appointed to be the Special Rapporteur on this topic.

At this year's session, the Special Rapporteur submitted his second report, which contains several draft conclusions. After they had been considered by the Drafting Committee, the Commission provisionally adopted five of those draft conclusions, together with the commentaries thereon.

It should first be noted that this topic is simply a development of article 31, paragraph 3 (a) and (b), of the Vienna Convention on the Law of Treaties, which states that the interpretation of a treaty shall take into account:

a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.

The Special Rapporteur correctly reflected this provision. For this purpose, he used significant examples of State practice and case law of international tribunals, and particularly the International Court of Justice, but also of other jurisdictional bodies. And the examples are current, including recent cases before the International Court of Justice.

I wish therefore to express our gratitude to the Special Rapporteur, Mr. Nolte, for the meticulous work that he has done.

In general, these five draft conclusions are satisfactory and for now we have no problem accepting them in principle. Since they were adopted provisionally, we shall express our views when the draft conclusions have been finally adopted by the Commission.

On this occasion, I should like only to refer to the conclusion, and the commentary thereon, which I consider to be most important. Conclusion 7, paragraph 3, states (and I quote): "It is presumed that the parties to a treaty, by an agreement subsequently arrived at or a practice in the application of the treaty, intend to interpret the treaty, not to amend or to modify it. The possibility of amending or modifying a treaty

by subsequent practice of the parties has not been generally recognized. The present draft conclusion is without prejudice to the rules on the amendment or modification of treaties under the Vienna Convention on the Law of Treaties and under customary international law."

This conclusion is correct and could even have been worded more forcefully. Subsequent practice serves to interpret a treaty, but not to amend or modify it.

This was a controversial issue before the 1969 Vienna Convention on the Law of Treaties. Even the ILC draft left open the possibility that a treaty could be modified by subsequent practice when that practice indicated an agreement of the parties to modify the provisions of the treaty. However, the Vienna Conference did not accept that view and decided by an overwhelming majority (53 votes to 15, with 26 abstentions) not to accept the ILC proposal.

Among the arguments advanced for rejecting the ILC proposal in Vienna, it was pointed out that modification by subsequent practice would evade constitutional control, which would affect the stability of treaties and even the *pacta sunt servanda* rule.

Under existing international law, therefore, subsequent practices of States parties to a treaty, although they constitute an important element for its interpretation, cannot be considered sufficient to modify the treaty.

As regards writings on the subject, there are Latin American authors who, in addition to their recognized competence as international jurists, represented their respective countries at the 1968 and 1969 sessions of the Vienna Conference on the Law of Treaties and who are adamant that it was the opinion of that Conference that subsequent practices, however important they might be for interpreting a treaty, could never amend or modify it.

In addition, it is our understanding that, over almost half a century since the adoption of the Vienna Convention on the Law of Treaties, there are no judgements of the International Court of Justice stating that subsequent practice can modify or amend a treaty. This is confirmed by the detailed and comprehensive analysis of such case law conducted by the Special Rapporteur, Mr. Nolte.

My delegation, reiterating its appreciation for the Special Rapporteur's work on this subject, will express its views on all the draft conclusions on subsequent agreements and subsequent practice in relation to treaty interpretation when they are finally adopted by the International Law Commission.

I shall now refer to "Immunity of State officials from foreign criminal jurisdiction", which is dealt with in chapter IX.

This topic is also one that the Commission has been considering for several years and specifically since 2007, when it decided to include the topic in its programme of

work and appointed as Special Rapporteur Mr. Román Kolodkin, who submitted three reports on the subject. When he ceased to be a member of the Commission, Mr. Kolodkin was replaced by Ms. Concepción Escobar Hernández. Those of us who know Ms. Escobar and her many qualities as an international jurist are glad that she is responsible for this important topic.

As we all know, the immunity of State officials from foreign criminal jurisdiction has several complementary and interrelated sources: the principles of international law concerning the sovereign equality of States and non-interference in internal affairs, as well as the need to ensure the stability of international relations and the interdependence of States in the conduct of their activities.

Although normally immunity from jurisdiction is an impediment to enforcement of criminal liability, at the same time it cannot facilitate immunity for those who are responsible for serious crimes defined by international law.

These are the premises underlying this complex topic. And the Special Rapporteur has made a very good start. Her first two reports confirm this, as they shed light on controversial problems, such as how to determine which State officials enjoy immunity *ratione personae.*

Now, in this third report which we are to consider on this occasion, she has limited herself to offering two elementary but admirably clear and precise texts, which can have a major influence on the subsequent treatment of the whole topic of immunity of State officials from foreign criminal jurisdiction. These are the texts defining a State official and specifying which State officials can enjoy immunity *ratione materiae*.

The definition is provided in draft article 2 (e), which states that " 'State official' means any individual who represents the State or who exercises State functions".

The determining factor defining a State official in the draft under consideration is therefore the existence of a link between the person and the State, which may consist of the fact that the official represents the State or exercises State functions.

The commentaries on article 2 (e) include a lengthy and non-exhaustive list of State officials who have been considered as such in national and international judicial practice.

The problem of which State officials enjoy immunity *ratione materiae* is resolved in article 5 in a manner that is also simple, precise and satisfactory.

A State official acting as such (in other words, representing the State or exercising State functions) possesses immunity *ratione materiae* from criminal jurisdiction before a foreign court.

Of course, as indicated in the commentaries, this does not prejudge the question of which acts can be covered by the immunity – a subject that is of considerable importance but that was not raised by the Special Rapporteur.

For now, my delegation would like only to place on record its unreserved support for the two draft articles submitted to us on this occasion by the Special Rapporteur and to congratulate her on the commendable work that she is doing.

Chapter X of the report concerns "Identification of customary international law", on which the Special Rapporteur, Sir Michael Wood, is now submitting his second report.

The second report focuses on what the Special Rapporteur considers to be the two constituent elements of rules of customary international law: "a general practice" and "accepted as law".

Here I must say that, for those who like me teach international law, the terms used by Sir Michael, which are taken from article 38 of the Statute of the International Court of Justice, are more forceful and precise than those usually employed, since they state that custom consists of a material element (general, constant and uniform practice) and a subjective element (*opinio juris*).

The requirement, as an element of customary international law, of a general practice means, as stated in draft conclusion 5, that it is the practice of States that contributes to the creation of rules of customary international law.

Practice may take a wide range of forms including, according to draft conclusion 7, diplomatic correspondence, legislative acts, the jurisprudence of national courts, the opinions of government legal advisers, official publications, relies to questionnaires from the International Law Commission, treaty practice, action in connection with resolutions of organs of international organizations, etc.

In addition, as noted in draft conclusion 7, "inaction" may also serve as practice. This is undoubtedly true, as a manifestation of the conduct of a State; however, precisely because of this negative connotation, we believe that in his next report the Special Rapporteur could develop this point further and include in his commentaries some examples of inaction.

In general, we believe that the Special Rapporteur's study and his conclusions regarding the topic of identification of customary international law are appropriate and well argued. We trust that in his third report he will be able to add certain points deserving special consideration. In addition to the question of "inaction" as a manifestation of the existence of a practice, there are other issues that could well be included, such as the creation of customary rules.

Reiterating our appreciation for the work done by the Special Rapporteur, Sir Michael Wood, we agree with him that the topic should result in the adoption of a

practical guide to assist practitioners in the task of identifying customary international law.

Chapter XII deals with the topic "Provisional application of treaties". The Commission had before it the second report of the Special Rapporteur, the Mexican jurist Juan Manuel Gómez Robledo, containing a substantive analysis of the legal effects of the provisional application of treaties. This gave rise to an interesting debate in the Commission.

We endorse the broad agreement expressed in the Commission that the basic premise underlying the topic is that, subject to the specificities of the treaty in question, the rights and obligations of a State which has decided to provisionally apply the treaty, or parts thereof, are the same as if the treaty were in force for that State.

We consider it important to mention in this connection the aspects of domestic law that could, in practice, limit the provisional application of certain provisions of treaties in cases where those provisions require, in compliance with domestic requirements, prior approval by the respective legislatures.

Lastly, I should like to refer to the two new topics which the Commission decided to include in its programme of work.

The first is "Crimes against humanity". This is a topic to which this General Assembly and its subsidiary body, the International Law Commission, have previously made significant contributions.

The concept of crimes against humanity is well defined in the Statute of the International Criminal Court. Several States, including Chile, have modified their domestic criminal legislation to adapt it to the 1998 Rome Statute. We therefore believe that the future work of the International Law Commission on this topic should not consist of redefining the concept of crimes against humanity but particularly of regulating the effects and consequences of categorizing behavior as a crime against humanity.

In our opinion, the first consequence should be the obligation either to prosecute or to extradite the perpetrator of a crime against humanity.

The Commission could also help to define the possible scope of universal jurisdiction in the case of crimes against humanity and the circumstances in which the State where the crime was committed should preferably try the case.

All this would prevent these serious crimes of international importance from going unpunished.

Obviously the Special Rapporteur, Mr. Sean Murphy, is facing a daunting task. We wish him every success and offer him our full cooperation.

The other important topic which the Commission decided to add to its long-term programme of work concerns "*Jus cogens*". My delegation welcomes and supports that decision.

One of the most important contributions made by the International Law Commission over its lifetime was to have incorporated in a treaty instrument a clear and precise concept of what constitutes a peremptory norm of international law, in other words a *jus cogens* rule.

This concept was endorsed by the large majority of the States participating in the Vienna Conference, although a significant number of States voted against or abstained, expressing their doubts, their reluctance or their actual disagreement with the concept of *jus cogens*, as incorporated in the Convention on the Law of Treaties.

That was 40 years ago. Today we know of no State that rejects the concept of *jus cogens* and no international tribunal that challenges it or scholar that questions it. To the contrary, *jus cogens* has been recognized in international instruments, reports of the International Law Commission and judgements of the International Court of Justice or of other international tribunals such as the Inter-American Court of Human Rights. Almost all writers consider *jus cogens* to be one of the basic foundations underlying the current international legal order.

Although the concept and effects of *jus cogens* are non-controversial, there are several issues concerning its nature, the requirements for its identification and its consequences or effects that fully justify its inclusion in the programme of work of the International Law Commission.

We thank and congratulate Mr. Dire Tladi for the document which we have had an opportunity to read as an annex to the report. We are sure that it will be extremely useful when the Commission starts to consider this important subject.

We agree with Mr. Tladi that the main legal issues to be studied by the Commission must be: the legal nature of *jus cogens*; requirements for the identification of a norm as *jus cogens*; an illustrative list of norms which have achieved the status of *jus cogens*, which could to some extent be considered as exhaustive; and the consequences or effects of *jus cogens*.

We believe that the study and conclusions to be adopted on these topics can represent an important contribution by ILC to the codification and progressive development of international law.

Mr. Chairman,

At the outset of my earlier statement, I noted that the International Commission had done fruitful work this year. Now, in concluding my statement, I should like to request this General Assembly, when it adopts the resolution on the Commission's report,

together with the usual paragraphs and decisions of a procedural nature concerning the reports adopted this year on second and first reading, to make special reference to this fruitful work done this year by the International Law Commission.

Thank you.