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69TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

Sixth Committee

Agenda Item 78

**Report of the International Law Commission
on the work of its sixty-sixth sessions**

Chapter IV: Expulsion of aliens

Chapter V: Protection of persons in the event of disasters

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Chapter IV: Expulsion of Aliens

Mr. Chairman,

Greece has been following with great interest the work of the International Law Commission on the expulsion of aliens and has offered specific comments on a number of issues and draft articles during the consideration of the ILC report by the Sixth Committee. We thank the International Law Commission and the Special Rapporteur Mr. Maurice Kamto for the completion of their work on this matter and the adoption of the entire set of draft articles on expulsion, which are accompanied by a detailed and comprehensive commentary.

We are of the opinion that the text of the draft articles has progressively improved on a number of points. We are pleased to note that the final text takes into consideration the fact that distinctions may be introduced, with regard to expulsion, between aliens living lawfully in a country and those illegally present. The same applies to the inclusion of a more flexible time frame, during which a State may apply different legislative provisions concerning the expulsion of aliens unlawfully present for a relatively short period of time. The addition of a “without prejudice” clause to a number of provisions is a useful tool to avoid potential discrepancies with other relevant international law regimes. We welcome the general reference to the prohibition against the collective expulsion of aliens, without mentioning a specific category of foreigners. The amendments introduced to the articles setting out more detailed and specific rules, clarify the scope of the relevant provisions, and allow for a certain degree of flexibility, which is necessary, in view of the diversity in State legislation and practice, and address the concerns expressed by several delegations. We also took note with interest of the new version of article 27 on the suspensive effect of an appeal lodged against an expulsion decision by an alien lawfully staying in the country, which is perhaps less ambitious, but appears to be more in line with State practice and international jurisprudence.

Furthermore, we welcome the provision contained in article 22 para. 1, which explicitly recalls that “an alien subject to expulsion shall be expelled to his or her State of nationality”.

Having said that, we would have wished for a stronger emphasis on the voluntary departure of persons under expulsion, a solution promoted by States and international organizations, and on the important role of readmission agreements.

Mr. Chairman,

The topic of the expulsion of aliens remains of critical importance, in particular for States facing mixed migration flows of unprecedented dimensions, as transit countries, and a rise in irregular migration. In fact, these States are striving to ensure humane conditions of reception and screening of foreign nationals illegally entering their territory, to identify and protect vulnerable persons and to improve the conditions of detention of aliens under

expulsion. A paramount obligation for States is to fully respect international human rights law and refugee law, while exercising their right to expel an alien from their territory.

The draft articles before us cover most of the aspects, substantial and procedural, of expulsion and identify in a comprehensive manner the obligations of States and the rights of those under expulsion. We remain, however, of the opinion that the elaboration of an international convention on the basis of the draft articles would not be beneficial. At the national and regional level, different sets of rules have progressively emerged, addressing the specific challenges faced by the States concerned. A telling example is the European Union legislation, transposed by Member States into their domestic legal order, which contains stronger provisions on the protection of human rights. Furthermore, at the regional level, the European Court of Human Rights has developed over the years an important body of case-law, interpreting, in particular, the European Convention's provisions on procedural rights and the prohibition of ill-treatment and providing specific criteria on how to achieve a fair balance between the right of a State to expel an alien and its obligation to respect the human rights of persons under expulsion.

Therefore, we believe that the issue of the expulsion of aliens should best be addressed through regional instruments, tailored to the needs of the countries involved, and the case-law of international judicial and quasi-judicial bodies, rather than through the adoption of uniform rules at the universal level. In this respect, the draft articles adopted by the ILC could serve as a pertinent set of guidelines, assisting States in designing and implementing legislative frameworks and developing practices in the field of the expulsion of aliens in compliance with their obligations under international law.

I thank you Mr. Chairman.

Chapter V: The protection of persons in the event of disasters.

Mr. Charman,

Greece would like to thank the Special Rapporteur Professor Eduardo Valencia Ospina for his work and his reports on this topic. This endeavour constitutes a valuable contribution toward resolving a series of complications which may be present in the everyday action and activities of relief workers around the world.

We also thank the Commission for preparing and making available to States and to international organizations the entire set of Draft Articles and its Commentaries thereon. Greece will present in detail its views on the Draft Articles by the end of 2015 as requested by the Commission. Hence, the present statement will be limited to a few preliminary views on Draft Articles 20 (which deals with the relationship of the Draft Articles with special and other rules of international law) and 21 (on their relationship with international humanitarian law).

On Draft Article 20, Greece would welcome a clearer statement in the Commentary regarding the application of the Draft Articles in conjunction with any specific treaty

provisions applicable in the event of disasters. It is also our understanding, as the Commission points out in the Commentary to Draft Article 20, that any treaty provisions dealing directly or indirectly with relief assistance would be applicable hand in hand with the present Draft Articles. However, the reference to the *lex specialis* rule seems to suggest that the application of the Draft Articles and the application of any specific treaty regime on relief assistance in the event of disasters might also be, in some cases, mutually exclusive. We are of the view that notwithstanding the degree of specificity of any treaty regime, the provisions of the Draft Articles have an added value *per se* and should remain applicable, filling relevant legal gaps, which seem to be unavoidable, even in cases of detailed treaty regimes already in place. In fact we would favour the usage of a 'notwithstanding' clause, rather than the 'without prejudice' which is currently used.

Draft Article 21 refers to the relationship of the Draft Articles with the rules of international humanitarian law. Its intention is to give precedence to such rules in times of armed conflict. While agreeing in principle with the approach of the Commission, we would be in favour of an approach according to which the two sets of provisions should apply in parallel where appropriate. We would welcome a clearer statement towards this direction from the Commission and a more 'straightforward' without prejudice clause in this regard so that the Draft Articles remain applicable in 'complex situations' of both armed conflict and natural or environmental disasters.

Greece is of the opinion that in general the Draft Articles are not only a well-balanced and useful legal tool regarding future treaty regimes on relief assistance but also a valuable set of provisions that could assist States in the interpretation of already existing international instruments.

I thank you Mr. Chairman.