

69th Session of the General Assembly

Item 78

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

Introduction and other issues
(Chapters I-III and XIV of the Report)

Expulsion of Aliens
(Chapter IV of the Report)

Protection of Persons
(Chapter V of the Report)

Statement by

Ms. Rita Faden

Director

Department of Legal Affairs

Ministry of Foreign Affairs

Portuguese Republic

New York, October 2014

Please check against delivery

Mr. Chairman,

Since I am taking the floor for the first time, let me congratulate you on your election as Chair of the Sixth Committee.

Allow us to thank the Chairman of the International Law Commission, Mr. Gevorgian, for presenting the Report on the work carried out by the Commission during its sixty-sixth session.

In today's statement, we will begin by making some general comments on the Commission's work. We will then address the topics 'Expulsion of Aliens' and 'Protection of persons in the event of disasters'. The other topics of the Report will be addressed in the coming days, according to the clusters proposed.

Introduction and other issues (Chapters I-III and XIV of the Report)

Mr. Chairman,

Portugal has followed the works and outputs of the sixty-sixth session of the International Law Commission with much interest. We are very pleased to note the inclusion in the Commission's programme of work of a new topic: '*Jus Cogens*'. As we had the opportunity to state in the past, '*jus cogens*' is a topic of the utmost importance. International peremptory norms deal with basic values of the international society which are instrumental for structural political goals of the present. Although the contribute to its clarification by doctrine, jurisprudence and the Commission itself, *jus cogens* – its content and the relation with other International Law norms and principles – continues to be a somewhat disputed mystery.

Mr. Chairman,

Regarding the combined work of the General Assembly and the Commission, we would like to share some general methodological and substantive concerns, and offer some ideas on what could be improved.

Firstly, we find that surveying the repetition of international facts should not be overrated as a working method, as it is sometimes. It is certainly a relevant legal tool. However, the practice of States alienated from a subjective criterion has little legal relevance. One has also to be reminded that from the 193 UN members only a minority reports to the Commission their State practice on a given subject. This may lead the Commission to base its work merely on the practice of States who are willing to perform such a report of practice and have the resources to do so.

On the other hand, we would like to encourage the Commission to embark on an exercise of progressive development of International Law whenever necessary to address new trends of contemporary international social relations. In this regard, one has to caution against autonomous readings of each of the sources of International Law that could be a formalist device to validate the substantive argumentation regarding a pre-defined result.

Secondly, it is noticed that only a small minority of UN Member States intervenes at the Sixth Committee debate on the Report of the Commission or in the negotiation of resolutions. This is certainly due to a lack of human resources of most delegations to follow the work of the Sixth Committee rather than to some kind of indifference regarding the importance of the work of the Commission. However, from the perspective of the legitimacy of International Law, we cannot strive for a universal law without having a plural participation in its formation.

Therefore, in the context of the UN Programme of Assistance on International Law and following the High Level Meeting on the Rule of Law and its outcome, for instance, it should be given a prioritization to aiding the development of national legal services with trained human resources in order to enhance a broader participation in the process of codification and progressive development.

Finally, there are other challenges that we believe deserve consideration as well, such as: the election of the Commission's members has to follow not only the criteria of merit or the

representation of different legal systems of the world, but also different doctrinal approaches to International Law; more interaction between the General Assembly and the Commission; greater openness for participation of civil society movements, not only at the UN level, but also at the national level; or not insisting in the dogma of consensus which frequently paralyses action by the will of a minority of members thus constraining a democratic approach to the process – the Charter, in its Article 18, establishes clear voting rules for the General Assembly.

Mr. Chairman,

To conclude this part of the intervention, we would also like to praise the contribution of the Secretariat to the codification and progressive development of International Law.

Expulsion of Aliens (Chapter IV of the Report)

Mr Chairman,

Now I would like to turn to Chapter IV of the Commission's Report on the topic 'Expulsion of Aliens'.

To begin with, Portugal would like to express its appreciation to the Special Rapporteur, Mr. Kamto, and to the Commission for their thorough work on this topic.

Mr. Chairman,

Throughout the past years, when discussing this topic at the Sixth Committee, Portugal has had the opportunity to stress the relevance of this topic as well as of the issue of fundamental rights when studying it.

Overall, we consider that the set of draft articles we have now before us provides a good framework for the protection and respect of individual rights in situations of expulsion and a balance between those rights and the sovereignty of a State over its territory. Furthermore, we also believe it reflects the Commission's work and the discussions held at the Sixth

Committee. It also provides solutions for some of the concerns that were raised during such discussions.

Nevertheless, we consider that there are some issues that could have been further clarified, as we have had the opportunity to state in previous years.

Mr Chairman,

Portugal welcomes the Commission's recommendation to the General Assembly to take note of the draft articles in a resolution and to encourage their dissemination. At this stage, we believe this set of draft articles should remain an overview of already existing legal norms, thus providing a general guide of law on the expulsion of aliens.

Protection of persons in the event of disasters (Chapter V of the Report)

Mr. Chairman,

I would like to now address Chapter V of the Commission's Report on the topic 'Protection of Persons in the Event of Disasters' and begin by commending the Special Rapporteur, Mr. Valencia-Ospina, for his comprehensive work, which allowed the Commission to progress steadily in its study and to adopt, on first reading, a set of 21 draft articles on the topic.

Mr. Chairman,

Portugal believes that, overall, the draft articles offer a good framework for working towards the protection of persons in the event of disasters. We note with satisfaction that the Commission has strived to maintain a rights-based approach throughout its work. Furthermore, when addressing cooperation, the Commission has been able to achieve a balance between State sovereignty and the need to protect human rights, an issue to which we have attached great importance.

At this point, however, we would like to comment briefly on some of the proposed draft articles that drew our attention.

Mr. Chairman,

Firstly, Portugal would like to refer to the definition of 'other assisting actor' as established in subparagraph c) of draft article 4 (Use of terms). The definition itself poses no problem for us. It is its interaction with other draft articles that raises some doubts. We have noticed that, while establishing rights and obligations in certain draft articles for those who assist the affected State, an explicit reference is made to intergovernmental organizations and non-governmental organizations, leaving out a reference to other entities or individuals, which are part of this definition.

In this sense, we consider that the Commission should further clarify the interaction between all actors and the affected State, as well as what are their rights and obligations when providing assistance to an affected State.

Mr. Chairman,

As regards paragraph 3 of draft article 14 (Consent of the affected State to external assistance), we consider that the Commission has still not been able to explain clearly what would occur in a situation where it is not possible for the affected State to make a decision, namely what would be the consequences for the protection of persons.

Mr. Chairman,

Portugal would like to conclude its statement on this topic by saying we intend to provide the Commission with our written comments and observations on the draft articles until the 1st of January 2016, as requested.

Thank you, Mr. Chairman.