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**69th Session of the General Assembly of the United Nations
Sixth Committee**

Agenda item 78

**International Law Commission
Report on ILC's 66th Session**

Chapters I -III - Introductory parts

Chapter IV – Expulsion of aliens

Chapter V – Protection of persons in the event of disasters

Chapter XIV - Other decisions and conclusions of the Commission

**Speech delivered on behalf of Mr. Ion Gâlea
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Mr. Chairman,

I would like to thank the Chair of the International Law Commission for the comprehensive presentation of the report on the last ILC session and to express the gratitude and appreciation of my delegation to all members of the International Law Commission for the work carried out during the Commission's 66th session.

As reflected in the report that is before us these days for debate, the Commission has continued its work on the topics already under its consideration, with significant progress on most of them, while it initiated, conscientiously, the consideration of other important topics for the development of international law, newly introduced on its agenda.

Romania's delegation welcomes the outcome of this work and takes this opportunity to present some of its views with regard to each of the topics. Our interventions will follow closely the cluster division and the organization of work proposed by the Chair.

We have taken note, as well, of the interest of the Commission in the comments of the States on some specific issues concerning a number of topics on its agenda as mentioned in Chapter III of the Report. We firmly intend to contribute to the research of the Commission on those particular topics by providing, in the delay specified, relevant Romanian practice and legislation, if any.

With regard to the items that make up the first cluster of our debate, my delegation underlines the following:

Expulsion of Aliens

The issue of the expulsion to aliens is an important and controversial issue which requires in depth and careful consideration on the part of States.

We commend the special rapporteur, Mr. Maurice Kamto (Cameroon), as well as the International Law Commission for the conclusion of the work under this topic and for the ample commentaries provided in support of the draft articles. We are well aware of the difficulties the rapporteur was faced with in dealing with this topic, given the sensitiveness of the subject.

The draft articles bring important added value, containing elements of both codification and progressive development. Romania considers that the suggestion to consider the elaboration of a Convention should be regarded with greatest care. Leaving the draft articles in their current shape might represent a better solution for the moment, allow practice of States to develop and consolidate.

The draft articles recognize a general right of states to expel aliens from the territory, in accordance with the current draft articles and other generally recognized norms of international law, with particular emphasis on those related to human rights and, in a narrower manner, to refugees law.

My delegation considers, from the outset, that the draft articles should have made a more pregnant distinction among different categories of aliens: refugees, asylum seekers, migrants, victims of

human smugglings and trafficking. We should bear in mind that displacement is a human condition, individuals have always moved from their original places of settlement seeking employment, shelter and protection from danger. This has always been a strategy used by humans when their means of livelihood have been destroyed or to protect themselves from extreme weather conditions, natural disasters, human conflict and other factors that put their lives at risk. However, it is commendable that the Commission provided for a large scope of the draft articles, covering also the aliens which are not lawfully present in the territory of a State, while providing for explicit exceptions: articles 26 (4), 27.

Romania notes that in articles 4 and 5 the notion “in accordance with law” or “provided by law” covers, according to the commentaries, essentially the domestic law of the expelling state. Romania understands that the term “law” has been used as such in order to allow international law standards to apply, as in the case of human rights, refugees of stateless persons. Nevertheless, States have an obligation to provide in their domestic law reasons and procedures for expulsion, which shall be applied in good faith.

Romania appreciates the value of the articles on “collective expulsion” and “disguised expulsion”. The latter reflects the general duty of the State to act in good faith while applying its legislation.

We appreciate the proposal of the Commission to include in the scope of the procedural guarantees the aliens subject to expulsion, irrespective whether they are lawfully or unlawfully present in the territory of the State. We understand the sensitivities linked to this proposal of progressive development that led to the introduction of paragraph 4 of article 26. However, this paragraph may seem problematic, for two reasons: i) it leaves open the question to which extent a state may not apply any guarantees in case of aliens unlawfully present in its territory for a brief duration; ii) even if the commentaries provided for some guidance, the notion “brief duration” remains subject to interpretation.

In the end, we express our appreciation with regard to the actions suggested by the EU in its statement on expulsion of aliens. The inclusion of sexual orientation as a ground for non-discrimination, the right to a speedy judicial review of the lawfulness of detention, the right to receive a written decision, the right to information about available legal remedies are pertinent suggestions that should have been taken into consideration. Provisions regarding the facilitation of access to medical treatment for this category as well as to the manifestation of tolerance against them might have also been included in the draft articles.

Romania, for its part, will carefully study the draft articles and consider appropriate actions with regard to them.

Protection of persons in the event of disasters

Regarding *Chapter V of the ILC Report, Protection of persons in the event of disasters*, we express our appreciation for the work of the Special Rapporteur, Mr. Valencia-Ospina, on the matter.

In general we favour the approach within the draft articles and the highlight of the significance of

the protection of the persons in circumstances of disaster, both by adopting preventive measures as well as by adopting the imperative disaster relief and assistance measures.

The draft articles emphasize both the duty of the affected State to take, in view of its sovereignty, the necessary measures to ensure the protection of persons and provision of disaster relief and assistance on its territory, such duty not excluding the external assistance if such assistance is available and the affected state is willing to make recourse to such external assistance. The articles make as well compulsory for States to make recourse to external assistance should its national response capacity be exceeded. This duty is exceptional in nature and is only relevant in serious circumstance of gravity. In either of the cases – internal or external assistance – the affected State has the primary role in the direction, control, coordination, supervision of such relief and assistance, whereas the external assistance is subject to the consent and possible conditions of the affected State

We have taken note of the decision of the Commission to submit for commentaries and observations these draft articles with the deadline of 1 January 2016. Romania will pay due consideration to the draft articles in view of sending its contribution to the ILC in the set timeframe.

Future programme of work

Romania welcomes the introductory report of Mr. Dire D. Tladi on the issue of *Jus Cogens* and fully supports its inclusion on the International Law Commission's programme of work. Romania agrees to the conclusion that the topic is significantly advanced and that its clarification will clearly benefit domestic and international judges, as well as States themselves in their practice. The Delegation of Romania also shares the proposals as to the four elements that could represent the focus of the future work on the topic.

Romania congratulates Professor Sean D. Murphy for being appointed as Special Rapporteur for the topic "Crimes against Humanity". However, we appreciate that this topic should be treated with great caution. First, a definition of the crimes against humanity should be avoided, as existing international law already contains sufficient guidance in this respect. Secondly, the purpose of the work within the International Law Commission should be clearly defined. Thirdly, the topic should take carefully into consideration the developments towards the universality of the International Criminal Court, and should be correlated with the existing initiatives in the field.

We are looking forward to the further study of the International Law Commission in this field.

Thank you.