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Report on ILC's 68th Session

Chapter IV – Protection of persons in the event of disasters
Chapter V – Identification of customary international law
Chapter VI – Subsequent agreements and subsequent practice in relation to the interpretation of treaties
Chapter XIII – other decisions and conclusions of the Commission

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General considerations

I would like to begin my statement by thanking the Chair of the International Law Commission for the comprehensive presentation of the report on the last ILC session.

I would equally like to take this opportunity to express the deep consideration of the Romanian delegation to all members of the International Law Commission for the work carried out during this 68th session, reflected in the impressive report of the ILC, both as regards the substance as well as the volume.

We assess this report of the ILC as a very good report, reflecting a good progress of work on all the topics that are on the agenda of the Commission. We take note of the request of reaction for some of the topics within the agenda of the ILC and we commit to submit our views in that respect in order to contribute to the streamline of the analysis on those topics.

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

Chapter IV – Protection of persons in the event of disasters

With reference to the **Protection of persons in the event of disasters**, having in mind that the development of the international law of disaster relief proves to be instrumental in responding to disasters and mitigating their consequences with the assistance of other States and international organizations, we highly appreciate the work carried out by the Commission on this topic and thank, in particular, the Special Rapporteur, Mr. Eduardo Valencia-Ospina, for his valuable involvement.

The ILC has concluded the consideration of this topic and recommend to the Generally Assembly the adoption of the convention on the basis of the draft articles.

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 establish a well-defined balance between the principle of state sovereignty and the primary role of the State affected by disaster in providing disaster relief assistance, this including the duty to seek external assistance should its national response capacity be exceeded, and the offers of external assistance which must be consented to by the affected State.

The draft articles aim at establishing rightfully how States and international community, on the basis of the principle of solidarity, can best respond to natural disasters and help the individuals affected to overcome the difficulties of such situations. This is a legitimate concern of human kind and of the international community and from this perspective the draft articles are much than welcome and should be further develop, in our view, in norms of international law, establishing rules concerning exclusively disaster relief assistance.

This would be an important development in international law, responding to actual needs of States and their citizens, considering moreover that natural phenomenon are more and more forceful in nature, being able to disrupt the functioning of the society unexpectedly and for long periods of time.

Chapter V – Identification of customary international law

We do appreciate the Special Rapporteur for the work done with regard to this highly challenging topic on the identification of customary international law. Significance progress was made so far with respect to this topic, which we consider of high relevance for States in the evaluation of whether a certain rule, a certain practice, a certain *behaviour* qualifies as a customary international norm, which must be unexceptionally observed.

We acknowledge the decision of the Commission to submit the 16 conclusions to States for comments. My delegation shall thoroughly analyse the conclusions together with the commentaries and submit its considerations on them within the requested deadline.

I would, hence, limit my intervention to specify that my delegation is in very much agreement with the approach of the Commission on this matter, especially to the widening of the scope of the analysis to include the practice of the international organizations alongside that of States (which are, undoubtedly, the primary "sources" of customary international law, but which, by devoluting competences to international organizations, have created a role for these subjects of international law in the process of formation and evidence of customary international norms). My delegation finds the conclusions that were articulated with respect to the identification of customary international norms, as, generally, reflective of the *status-quo*.

In concluding, allow me to express special thanks to Sir Michael Woods whose deep knowledge of the topic and consistent guidance greatly contributed to the important advancement of the work on this complex topic.

Chapter VI - Subsequent agreements and subsequent practice in relation to the interpretation of treaties

The Romanian delegation welcomes the extensive work of the International Law Commission concerning *subsequent agreements and subsequent practice in relation to the interpretation of treaties* and reiterates the importance of the topic, as it aims to clarifying significant aspects concerning the law of the treaties.

Romania recognizes the progress made by the ILC in the analysis of this topic and expresses its consideration to Special Rapporteur, Mr. Georg Nolte, how extensively and comprehensively explained the rationale behind every draft conclusion on the matter.

Romania is very much pleased to see that the new draft conclusion 1a) explicitly reflects the relevance of the subsequent agreements and subsequent practice in relation to the interpretation of treaties.

We do note that in the commentaries to this conclusion, it is being stated that the conclusions on this very topic do not address the subsequent practice and subsequent agreements in relation to treaties between States and international organisations. Given the substantive treaty relations that exist nowadays between States and international organisations and the participation of international organisations in international treaties we are of the opinion that some consideration should be given to these aspects as well in the analysis on this topic as it might be of relevance to drawing the accurate conclusions on the relevance subsequent practice on treaty interpretation.

With regard to the question of the relevance of the "nature" of a treaty in establishing the value to be given to a certain mean of interpretation, we are of the opinion that these should not be included as an element influencing the analysis. We take this stance as we appreciate that the unity of the interpretation process should not be affected and because we find it necessary to avoid a characterization of the treaties, which, in our view, is unnecessary for the purpose of identifying a general and uniform rule concerning subsequent agreement and subsequent practice as relevant for treaty interpretation.

As far as new conclusions 12 and 13 are concerned, Romania is in favour of the text of the conclusions and of the commentaries and appreciate the wide practice that was provided in support of the conclusions.

The question of whether the pronouncements of the expert treaty bodies represent some form of practice with regard to the interpretation of the international treaty in relation to which they are made, we favour a conclusion to the contrary for the main reason that in themselves they do not represent *practice* (within the meaning of the *Vienna Convention on the Law of Treaties*), but are drawn on State practice with regard to the application of the (articles of the) treaty in question.

It is true that, in view of State practice, treaty expert bodies, through this instrument of pronouncements, could clarify the meaning of the treaty and be of relevance to state authorities in ascertaining the exact meaning of an international treaty and the standard of application of the norm – which is important for identifying the way in which the internal norms in application of the treaty must be drawn up or in which they must themselves be interpreted in order to confirm the treaty provisions. However, these arguments do not suffice to make pronouncement of expert bodies equivalent to subsequent practice within the meaning of art. 32 of the Vienna Convention. We would favour, consequently, a paragraph in line with paragraph 26 of the commentaries to draft conclusion 13, but, at the same time, we consider sufficient the language in conclusion 13, including paragraph 4.

Chapters III and XIII – Future work of the ILC

As far as the new topics included on the ILC long-term programme of work (as indicated in Chapter III and detailed in the Annex to the Report) we express the following views:

We welcome the intended consideration of the settlement of international disputes to which international organisations are parties. We see merits if the analysis would include an in-depth consideration of the settlement disputes of a private law character involving an international organization. Such disputes are very frequent nowadays and merit special attention in view of clarifying the legal implications of such situations and the limitations of such private law disputes form the jurisdictional point of view.

With regard to the second topic, *Succession of States in respect of state responsibility*, although we find it as an interesting topic of international law, especially in the context of the State dissolution in the 90s in Central and Eastern Europe, we see the analysis of ILC on this topic of limited relevance in nowadays realities. We are willing to here on the part of the ILC arguments in favour of engaging in such a research exercise and of its proposed outcome, since it has been considered, in the presentation included in the Annex, that such an evaluation would complete the codification of succession of states in respect of treaties, of State property, archives and debts as well as in respect of nationality. It should not be forgotten that not all of these conventions have formally entered into force.

This concludes my remarks on the first chapters of the ILC report.

Thank you.