

STATEMENT BY DR. VISHNU DUTT SHARMA, FIRST SECRETARY, ON AGENDA ITEM 81
– REPORT OF THE INTERNATIONAL LAW COMMISSION OF THE WORK OF ITS SIXTY-
THIRD SESSION – CHAPTERS VI, VIII & IX – AT THE SIXTH COMMITTEE OF THE 66TH
SESSIION OF THE UNITED NATIONS GENERAL ASSEMBLY ON OCTOBER 28, 2011

Mr. Chairman,

I extend my gratitude to the Chairman of the International Law Commission (ILC) Mr. Maurice Kamto for introduction of the Report of the sixty-third session of the Commission on the second cluster of topics.

Mr. Chairman,

Concerning the topic of “Effects of armed conflicts on treaties”, we commend the work of Special Rapporteur Mr. Lucius Caflisch on the topic and congratulate him for adoption, by the Commission, of the entire set of draft articles on this topic. We also recognize the scholarly work done on this topic by his predecessor Sir Ian Brownlie, as the first Special Rapporteur.

Mr. Chairman,

We support the general proposition of draft articles that the treaties are not automatically terminated or suspended as a result of an armed conflict. The termination, withdrawal or suspension of a treaty in the event of an armed conflict would be determined in accordance with the law on treaties, taking into account all relevant factors including the nature of the treaty, its subject-matter, object and purpose, and the characteristics of the armed conflict. We welcome the provision under draft article 4 which preserves the operation of the provisions of existing treaties applicable in situations of armed conflict.

Mr. Chairman,

The set of 18 draft articles has an annex which contains an indicative list of treaties. We are of the view that all the 12 category of treaties cannot be combined into one list. The treaties listed out are different in nature and scope. Some are permanent in character such as treaties establishing land and maritime boundaries. The treaties of permanent character need to be listed separately from other treaties whose continued existence depends on the intention of the parties. In this regard, we take note of the

statement by the Chairman of the ILC which he made during the introduction of work on this topic that the list of treaties is neither definitive nor exhaustive.

Mr. Chairman,

In our view, the scope of this topic should be limited to treaties concluded between States and should not include treaties concluded between international organizations. Further, the definition of 'armed conflict' should be limited to armed conflicts between States and should not include internal conflicts, as treaties are entered into by States, and internal conflicts do not directly affect treaty relationship.

As recommended by the Commission, we are in favour of taking note of the draft articles on the effects of armed conflicts on treaties in a resolution, and annexing them to the resolution for consideration at a later stage for the elaboration of a convention, which would depend upon the result of detailed examination by States and position thereupon.

Mr. Chairman,

Turning to the topic of "Protection of persons in the event of disasters", we would like to congratulate the Special Rapporteur, Mr. Eduardo Valencia-Ospina, for his fourth report. We also express our appreciation for the members of Drafting Committee, as a result of whose work, the Commission was able to adopt at its sixty-third session, draft article 6-11 on this topic with commentaries.

We support in principle, the provision under draft article 10 recognizing the duty of the affected State to seek assistance from the other States and relevant international organizations including the NGOs. Draft article 9 clearly indicated the duty of the affected state to ensure the protection of persons and provision of disaster relief and assistance on its territory. It recognizes the primary role of the affected state in direction, control, coordination, and supervision of such relief and assistance. This conforms to Resolution 46/182 of the General Assembly, which held that: Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory.

Mr. Chairman,

We are in agreement with the notion in draft article 11 that external assistance requires the consent of the affected State. We stress that the sovereignty, territorial

integrity and national unity of States must be fully respected in accordance with the UN Charter while providing the assistance within the territory of the affected State.

Mr. Chairman,

Regarding the topic of “Expulsion of aliens”, we recognize the importance of work done by the Special Rapporteur Mr. Maurice Kamto. We congratulate the Special Rapporteur on the presentation of his seventh report at the last session of the Commission. Seventh report provided an account of recent developments in relation to the topic and also proposed a restructured summary of the draft articles. Additionally, the Commission considered addendum 2 to the sixth report of the Special Rapporteur.

We support the general approach taken by the Special Rapporteur which deals with the right of a state to expel and the rights and remedies available to the person subject of expulsion, including the legal consequences of unlawful expulsion. Regarding the provision concerning extradition, although both expulsion and extradition have the effect of a person leaving the territory of one state for another, however, the legal basis and the laws governing the process and the procedure involved are altogether different and one cannot be used as an alternate for the other from the legal and technical stand point.

We are in favour of continued work by the ILC to come up with viable guidelines to be observed by states in cases of expulsion of aliens.

Thank you Mr. Chairman.

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