



STATEMENT BY MR. A. KRISHNASWAMY, MEMBER OF PARLIAMENT AND
MEMBER OF THE INDIAN DELEGATION, ON AGENDA ITEM 82: REPORT OF THE
INTERNATIONAL LAW COMMISSION CHAPTER VI: EXPULSION OF ALIENS,
CHAPTER VII: EFFECTS OF ARMED CONFLICTS ON TREATIES, CHAPTER VIII:
RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS, CHAPTER X: OTHER
DECISIONS AND RECOMMENDATIONS AT THE SIXTH COMMITTEE OF THE 62ND
SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY ON OCTOBER 30,
2007

Thank You, Mr. Chairman,

I thank the Chairman of the International Law Commission, Mr. Ian Brownlie, for his comprehensive introduction of the Report of the 59th Session of the International Law Commission on the first cluster of topics.

In connection with the topic "Expulsion of aliens", we commend the Special Rapporteur, Mr. Maurice Kamto, for his second and third reports dealing, respectively, with the scope of the topic and definitions, and with five draft articles on certain general provisions limiting the right of a State to expel an alien. The topic is particularly important and urgent in view of the global upsurge in the phenomenon of migration, including irregular migration.

We support the general approach taken by the Special Rapporteur. It is essential that the right of a State to expel aliens is exercised in accordance with the relevant rules of international law, including those relating to the protection of human rights and to the minimum standards for the treatment of aliens.

Mr. Chairman,

The Commission has sought information on domestic legislation of States on some aspects of this topic. Indian law does not provide for deprivation

of nationality or for expulsion of nationals. A person who voluntarily acquires another nationality is deemed to have surrendered his Indian nationality. However, Indian law now recognises dual citizenship through a registration process and grants dual citizens the right of free entry and residence.

Mr. Chairman,

On the topic "Effects of armed conflicts on treaties", we commend the Special Rapporteur for his third report. We also commend the working group which examined several issues that had been identified in the Commission's consideration of the third report presented by the Special Rapporteur.

On the scope of the topic, we reiterate our view that it should be limited to treaties concluded between States and not include treaties concluded by international organizations; the definition of "armed conflict" should be considered independently of its effects on treaties; and that the scope of an "armed conflict" should be limited to conflicts between States and not deal with internal conflicts, as treaties are entered into by States, and internal conflicts do not directly affect treaty relations. The frequency or intensity of internal conflicts by themselves would not justify their inclusion in the present text and could be dealt with by the Vienna Convention on the Law of the Treaties. The *Tadic Case*, referred to the possibility of an armed conflict on the territory of one State assuming or having the character of an international conflict. However this would not justify extending the scope of the topic to all internal armed conflicts especially those that do not have the required character of an international conflict.

All relevant circumstances, including the object and purpose of the treaty, the nature and intensity of the conflict or the situation that arises there from and the nature of the treaty obligation itself, and subsequent actions of the parties in relation to the treaty, should be taken into account for determining whether the treaty or some of its provisions could continue in force, in the context of armed conflicts. The principle of non-automatic termination or suspension contained in Draft Article 3 was useful in that it encouraged the stability and continuity of treaty relations,

Mr. Chairman,

Draft Article 7 provides a listing of treaties which, on the basis of necessary implication from their object and purpose, are considered as continuing in operation during an armed conflict. It is necessary to identify some general criteria for determining the type of treaties that would continue to apply during an armed conflict. In particular, treaties that expressly apply in case of or

during an armed conflict, and therefore, can in no circumstances be terminated by an armed conflict, should be identified and considered separately from other treaties.

Mr. Chairman,

I now turn to the topic "Responsibility of International Organizations". We would also like to convey our appreciation to the Special Rapporteur Professor Gaja on his fifth Report on the topic dealing with the content of the international responsibility of an international organization.

The fifth report contained 14 draft articles, dealing with general principles of the content of international responsibility of an international organization; reparation for injury and the issue of serious breaches of obligations under peremptory norms of general international law. The fifth report followed, like the previous reports, the general pattern of the articles on Responsibility of States for internationally wrongful acts.

Draft articles 31 to 34 and 36 dealing with general principles of the content of international responsibility of an international organization, follow closely the wording of the corresponding provisions on Responsibility of States for internationally wrongful acts. Draft article 35 correctly emphasizes the special relationship between an international organization and its members whereby, unlike a State which could not rely on the provisions of its internal law as justification for failure to comply with the obligations entailed by its responsibility, an international organization might be entitled to rely on its internal rules as a justification for not giving reparation towards its members.

We further commend the Special Rapporteur for the substantial progress on the topic made at this session which resulted in the adoption of Articles 31 – 45 after consideration by the Drafting Committee, as well as commentaries to these Articles.

Mr. Chairman,

The Commission has sought our comments on Draft article 43, relating to an obligation of members of a responsible international organization to take, in accordance with the rules of the organization, all appropriate measures in order to provide the organization with the means for effectively fulfilling its obligation to make reparation. In our view, this article deals essentially with obligations of States and its inclusion in draft articles on responsibility of international organizations is not appropriate.

Mr. Chairman,

On Chapter X of the Report, we welcome the Commission's decision to include on its programme of work, two new topics, "Protection of persons in the event of disasters" and "Immunity of State officials from foreign criminal jurisdiction" and the appointment of Special Rapporteurs for these topics.

We also welcome the Commission's decision to undertake an examination of the possibility of including the topic "Most-favoured-Nation clause" in its long-term programme of work. The conclusion in recent years of a large number of bilateral agreements on investment protection and on preferential trading and free trade arrangements, all of which include the obligation to provide most-favoured-nation treatment, have resulted in a substantial body of state practice in this field and the Commission could play a useful role in providing clarification on the meaning and effect of the most-favoured-nation clause especially in the field of investment agreements.

Thank you, Mr. Chairman.

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