

STATEMENT BY MR. RAJEEV SHUKLA, MEMBER OF PARLIAMENT AND MEMBER  
OF THE INDIAN DELEGATION, ON AGENDA ITEM 75 – REPORT OF THE  
INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS 60<sup>TH</sup> SESSION –  
CHAPTER VII – RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS,  
CHAPTER VIII – EXPLUSION OF ALIENS, CHAPTER IX – PROTECTION OF  
PERSONS IN THE EVENT OF DISASTERS, AND CHAPTER X – IMMUNITY OF  
STATE OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION AT THE SIXTH  
COMMITTEE OF THE 63<sup>RD</sup> SESSION OF THE UNITED NATIONS GENERAL  
ASSEMBLY ON NOVEMBER 03, 2008



Mr. Chairman,

I thank the Chairman of the International Law Commission, Mr. Edmundo Carreno, for his comprehensive introduction of the Report on the 60<sup>th</sup> Session of the International Law Commission on the final cluster of topics.

On the topic "Immunity of State officials from foreign criminal jurisdiction", we congratulate the Special Rapporteur Mr. Roman Kolodkin, on his preliminary report, which defines the scope of the study the Commission should carry out on this complex and sensitive issue. I also thank the Secretariat for preparation of the detailed Memorandum on the subject.

We fully subscribe to the Special Rapporteur's proposal that the topic should include all "State officials" in the scope of the study. As to immunity *ratione personae*, we note the broad agreement in the Commission that it was enjoyed by Heads of State, Heads of Government and Ministers of Foreign Affairs, and favour the identification of criteria to establish those other State officials to whom personal immunity would apply.

We agree with the Special Rapporteur that the Commission should examine only the immunity of State officials from *foreign criminal* jurisdiction: it should set aside questions relating to immunity with respect to international criminal tribunals and the domestic courts of the State of nationality of the official; the source of immunity of State officials from foreign criminal jurisdiction is not international comity but, first and foremost, international law and the topic should focus on immunity under international law. Further, the immunities of diplomatic agents, consular officials, members of special missions and representatives of States to international organizations have already been codified and need not be addressed in the context of this topic.

We also agree with the view of the Special Rapporteur that the 2002 Judgment of the International Court of Justice in the *Arrest Warrant* case was both a correct and a landmark decision. It had been adopted by a large majority and contained a clear and accurate depiction of the current state of international law in this field.

On the topic "Protection of Persons in the Event of Disasters" I commend the Special Rapporteur, Mr. Eduardo Ospina, for the presentation of his first report on a topic of great contemporary relevance, which identified the core and complex issues that would require to be addressed and raised a number of questions relevant to determining the approach, parameters and objectives, and the need to define the scope of the topic. I also thank the Secretariat for preparation of a thoroughly researched Memorandum on the subject.

On the question of the categories of disasters to be included within the topic, the Commission should focus on natural disasters, as there are already specific legal regimes for dealing with environmental damage from manmade disasters, such as oil spills and from nuclear accidents. Further, armed conflicts should also be excluded as international humanitarian law deals in great detail with this aspect.

Mr. Chairman,

The concept of the “responsibility to protect” in the context of persons affected by a disaster is not appropriate for inclusion within the scope of the topic, as the primary responsibility for the protection of persons in its territory or within its jurisdiction lies on the State concerned. It may be recalled that the General Assembly, in several resolutions, reaffirming the sovereignty of States, has recognized the primary role of the affected States in initiation, organization, coordination and implementation of humanitarian assistance within their respective territories. The Secretariat Memorandum also details the strong views expressed by many States, including my own, on this issue.

The Special Rapporteur, in his Report, pertinently notes that the areas of law applicable to the protection of persons in the event of disasters underscores the “essential universality of humanitarian principles” and is also based on such principles as humanity, impartiality, neutrality, and non-discrimination, as well as principles of solidarity and non-intervention.

On the question whether, in addition to protection of persons, the topic should also extend to protection of property and the environment, in our view, the primary focus of the topic should remain that of protection of persons. However, in some situations, protection of property may also be necessary for protecting persons affected by the disaster.

Addressing the scope of the topic, *ratione personae*, the Special Rapporteur recognizes the need to take account of the role of the multiplicity of actors, including international, non-governmental organizations and non-State actors in addition to State actors, and raises the question whether there exists a right of initiative in offering assistance. Here again, it is essential to emphasise the primary role of the affected State as international assistance to persons within its territory, as part of international solidarity and cooperation, takes place with its consent and under its supervision.

Finally, on the form of the work, while a final decision should await its completion, as acknowledged by the Special Rapporteur and by a number of members, it may be more realistic to prepare Guidelines rather than a Convention.

I now turn to the topic “Responsibility of International Organisations”. The Commission considered the sixth report of the Special Rapporteur, Mr. Giorgio Gaja, and provisionally adopted eight draft articles. The draft articles adopted this year basically follow the general pattern of the Draft Articles on State Responsibility.

As regards the taking of countermeasures by international organizations, the Commission is divided on whether an international organization could take or

could be subjected to countermeasures, and whether the draft articles should contain any provisions on countermeasures. My delegation considers that the Commission should adopt a cautious approach with respect to countermeasures by and against international organizations, in view of the limited practice, the uncertainty surrounding their legal regime, and the risk of abuse that they would entail. Disputes between an international organization and its members should, as far as possible, be settled in accordance with the rules and through the internal procedures of the organization. The rules of the organization should be decisive in determining whether an organization can resort to countermeasures against its members or be the target of countermeasures by them.

On the topic "Expulsion of Aliens", the fourth report of Professor Maurice Kamto addressed two questions. On the first question, my delegation believes that persons holding dual or multiple nationalities could not be treated differently from other nationals, and the principle of non-expulsion of nationals must also apply to persons with one or more other nationalities. On the second question, depriving a person of his nationality with a view to facilitating his expulsion is not justified.

In conclusion, I would again commend the International Law Commission for the excellent progress made at its 60th session.

Thank you, Mr. Chairman.

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