

STATEMENT BY MS. SANTOSH CHOWDHARY, MEMBER OF PARLIAMENT, ON
AGENDA ITEM 81 – REPORT OF THE INTERNATIONAL LAW COMMISSION ON
THE WORK OF ITS SIXTY-THIRD SESSION – CPATERS I-V AT THE SIXTH
COMMITTEE OF THE 66TH SESSION OF THE UNITED NATIONS GENERAL
ASSEMBLY ON OCTOBER 24, 2011

Mr. Chairman,

I thank Prof. Maurice Kamto, Chairman of the sixty-third session of the International Law Commission, for his detailed and informative introduction to the work of the Commission at its sixty-third Session on the first cluster of topics, and for guiding the work of the Commission at this session.



I also commend all members of the Commission on a very successful and productive session in which it has completed its work and adopted on second reading, sets of Draft Articles on three major topics on its agenda, namely, the Responsibility of International Organizations; the Effects of Armed Conflicts on Treaties; and Reservations to Treaties. The Commission has also made substantial progress in its consideration of the other topics on its agenda, including the identification of new topics. I also thank the Secretariat for their contribution to the work of the Commission.

Mr. Chairman,

On the topic "Reservations to Treaties", we congratulate the Special Rapporteur, Prof. Alain Pellet, for the adoption by the Commission of the "Guide to Practice on Reservations to Treaties", along with commentaries. Prof. Pellet submitted a total of 17 reports, beginning with his first report on the topic in 1995. The "Guide to Practice" is very detailed and exhaustive, and tries to cover

all situations, and is based on an in-depth and exhaustive analysis of State practice and case law, and is sure to be an invaluable tool for government legal advisers as well as practitioners in resolving problems posed by reservations to treaties and interpretative declarations. We also appreciate the important contribution made by the Working Group chaired by Mr. Vasquez Bermudez to the Commission's work on this topic.

In addition to the Guide to Practice, The Commission has also adopted an annex on the "reservations dialogue" as well as a recommendation on "mechanisms of assistance in relation to reservations".

My delegation will comment on these proposals when the Sixth Committee decides to take up its detailed consideration of the Guide to Practice.

Mr. Chairman,

On the topic of "Responsibility of International Organizations", we commend the Special Rapporteur, Prof. Giorgia Gaja, for the adoption by the Commission, of a set of 67 draft articles together with Commentaries. We appreciate the work of the Special Rapporteur, Professor Giorgio Gaja of Italy, for his comprehensive eight Reports submitted from 2003-2009. The completion of the Commission's work on this topic is a significant achievement, as it has been engaged on the topic relating to the law of responsibility for more than 60 years.

We note that the draft articles essentially follow the pattern of the articles on Responsibility of States for International Wrongful Acts, with necessary adjustments taking into account the different nature, structure and functions of international organizations. The present version of the draft articles has some new developments which are to be welcomed. The draft articles lay down rules of attribution, circumstances precluding wrongfulness, effects of a breach, and the principle of reparation.

Mr. Chairman,

Draft article 5 establishes that "the characterization of an act of an international organization as internationally wrongful is governed by international law". This provision would clarify that international law determines the fact whether or not an act of an international organization is wrongful. In this regard, we also welcome the provisions of Part Six which safeguard the application of special rules of international law that may be applicable, and the provisions of the United Nations Charter.

An internationally wrongful act may create direct liability, in the form of joint or several responsibilities, between an international organization and its member States. In addition, acts by a State that assists an international organization that commits an internationally wrongful act may trigger indirect responsibility, which needs to be examined carefully.

Mr. Chairman,

On the issue of countermeasures, we reiterate our view that disputes between an international organization and its members should be settled in accordance with the rules of the organization and through the internal procedures, and that there should be no question of countermeasures unless expressly provided for in the rules of the organization. In this regard, we welcome the detailed criteria and conditions added to the countermeasures regime (under draft articles 22, 51-57). These provisions, which lay down the conditions under which countermeasures can be resorted to by a state or intergovernmental organization, as well as the object and limits, and the requirement of proportionality, would ensure that countermeasures may be resorted to only in exceptional cases.

Mr. Chairman,

We support the recommendation of the Commission that the General Assembly take note of the draft articles in a resolution and annex them to the resolution, and to consider, at a later stage, the elaboration of a convention on the basis of the draft articles.

Mr. Chairman,

In Chapter III of the Report, the Commission has listed a number of specific issues on which comments of States have been sought. We thank the Commission for having identified and listed out these issues in detail and would be providing our responses separately.

In conclusion, Mr. Chairman, I once again congratulate the International Law Commission and, in particular, the Special Rapporteurs, for a very successful session.

Thank you Mr. Chairman.

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