

**United Kingdom of Great Britain
and Northern Ireland**

Sixth Committee

**Statement on
The Report of the ILC: Part One**

by

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UNGA SIXTH COMMITTEE: AGENDA ITEM 79

REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY THIRD AND SIXTY
FOURTH SESSIONS: PART 1

CHAPTERS I-III (INTRODUCTORY PARTS), CHAPTER IV (PROTECTION OF PERSONS IN THE EVENT OF
DISASTERS), CHAPTER V (EXPULSION OF ALIENS) & CHAPTER XII (OTHER DECISIONS AND
CONCLUSIONS OF THE COMMISSION)

(NEW YORK: 1 NOVEMBER 2012)

Mr Chairman/Madam Chair

I would like to thank the Chairman of the Commission for his report to the Sixth Committee. The UK wishes to congratulate all the members of the Commission who were either elected or re-elected during the sixty-sixth session of the UN General Assembly. It also wishes to pay tribute to those who left the Commission in 2011.

The UK welcomes the report on the ILC's sixty-fourth session; and also thanks all the members of the Commission for a successful first year of the new quinquennium which has seen some good progress.

The UK also takes this opportunity to commend and thank the Codification Division of the Secretariat for their excellent work. That is not only for the support they provide to the Commission, but also in the assistance that they offer to States. The UK would also like to express its appreciation for the work of the Codification Division in their continuous updating and management of the Commission's website. It is an invaluable resource, facilitating engagement with the Commission's work and as a tool for research more widely.

Before turning to some comments on the topic of **Protection of persons in the event of disasters** the UK wishes to pay tribute to the Secretary of the Commission and Head of the Codification Division, Mr Vaclav Mikulka, on his retirement. We note the outstanding contribution he has made both to the work of the Commission and more widely to the UN Office of Legal Affairs and send him every good wish for the future.

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Mr Chairman/Madam Chair

Turning to the topic **Protection of persons in the event of disasters**, the UK is grateful to the Commission for the careful consideration they are giving to this topic. The UK also expresses its appreciation to the Special Rapporteur for his continued work and for the presentation of a number of new draft articles during the latest session of the Commission.

On previous occasions the UK has taken the view that this is not an area where the terminology of rights and duties sits very comfortably with existing state practice and with the essentially voluntary nature of the principle of cooperation. The points set out in paragraph 62 of the Commission's report seem to us to be particularly appropriate here. We wonder whether a rigid system of legal rights would be more likely to assist or perhaps rather to discourage cooperation in many given situations. Taking these points into account, we also continue to have doubts as to whether a convention would be the right vehicle for the eventual product of the Commission's work, as opposed to a more flexible form such as a guide to good practice.

Turning now to the texts of the new draft articles, the UK considers that the text of new draft Article A would be improved if the mandatory element could be removed, which the UK believes is not appropriate in this context. In Article 13, we would note that states are free to refuse assistance, and that they should therefore have the right to accept assistance subject to conditions. We agree with the statement made on behalf of the EU that a needs-based perspective here is preferable to a rights-based one. As for Article 14, the assisting state always has the right to withdraw, and this should not be conditioned on consultation; while that's usually a positive value it may not always be possible in cases of urgency or danger. We are also unconvinced of the need for a Status of Forces Agreement for these purposes, and agree with the Special Rapporteur that this would exceed the scope of this topic as originally envisaged.

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Mr Chairman/Madam Chair

Turning to the topic **Expulsion of aliens**. We note that a lot of work has gone into this topic and thank the Commission and Special Rapporteur. The draft articles deserve careful attention and we propose to submit written comments on this work by the deadline of January 2014.

I should point out, however, that our initial analysis confirms the concerns we have raised in previous years. We consider this topic is problematic. It raises many difficult and complex issues

which intrude directly into the domestic sphere of States. We continue to be of the view that this is a very difficult topic for the ILC to address and that this it is not a suitable topic for codification or consolidation at the present time.

Whilst we consider this matter to be unsuitable for codification, we would point out that the UK's own domestic legal framework shows its commitment to the protection of the rights of aliens faced with expulsion. We consider it should remain the case that individual states should enjoy considerable discretion in this area. As well as considering human rights principles, it is vital that any discussion of this topic recognises that in the modern globalised world there are significant increases in the numbers of people moving between states - for work, study and leisure - often for short periods of time. Accordingly, any legal framework needs to also permit the effective enforcement of domestic immigration controls against those who never have and never claim to have any basis for human rights protection.

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Mr Chairman/Madam Chair

Finally, the UK has a couple of comments on the current programme of work. The UK welcomes the inclusion of the topics **provisional application of treaties** and **Formation and evidence of customary international law** in the current programme of work. The UK also welcomes the decision of the Commission not to include the topic **Protection of the atmosphere** in the current programme. The topic deals with highly technical issues and we question whether the Commission has the expertise to tackle them. The UK takes the view that this topic should not be included in the current programme of work in the future.

That concludes this statement on behalf of the UK.