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(translation)

Statement by Ms. Guo Xiaomei

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**At the Sixth Committee
of the 67th Session of the UN General Assembly**

On Agenda Item 79

**Report of the International Law Commission
on the Work of its 64th Session
(Part I: Chapters I-III, IV, V & XII)**

New York, 2 November 2012

Mr. Chairman,

Please allow me to thank Mr. Lucius Caflisch, Chairman of the International Law Commission, for introducing the report and the Secretariat of the ILC for its hard work.

Mr. Chairman,

At this year's inaugural session of the newly constituted Commission, a rational, clear and detailed program of work was formulated for the activities of the Commission in the next five years. A new set of draft articles on Expulsion of Aliens was completed; progress was made in the drafting of articles on Protection of Persons in the Event of Disasters; and substantive work was initiated on some newly included topics such as Formation and Evidence of Customary International Law and Provisional Application of Treaties. The Chinese delegation appreciates the above progress.

Mr. Chairman,

Selection of new topics is of critical importance for the International Law Commission because it has a direct bearing on the direction of its future work. In selecting new topics, we should of course take into account the suitability of a topic for codification or progressive development, but we should also consider whether the final product of a topic is urgently needed and can be widely accepted by the international community. Pursuant to this standard, the Chinese delegation endorses the decision of the ILC to include the topics of Formation and Evidence of Customary International Law and Provisional Application of Treaties into its programme of work.

As to the protection of atmosphere, the Chinese delegation aligns itself with the views of some other delegations that this topic seems to be too general and technical. There are many similar topics, such as "protection of earth", "protection of oceans", "protection of polar regions" etc. These topics may be appropriate subject matters for academic research, but obviously not suitable for being considered by the ILC. Certain basic questions, such as the delimitation between atmosphere and outer space, which has been discussed by the United Nations Committee on Peaceful Use of Outer Space for

several decades, have no signs of being resolved in the near future. Under these circumstances, this topic is not suitable for codification or progressive development of international law. As a matter of fact, many conventions and agreements already to some extent addressed this issue and are playing an effective role in this regard, such as the Vienna Convention for the Protection of Ozone Layer. Even if the Commission agreed to consider this topic and managed after much travail to come up with a set of draft articles in the end, those articles will not be of any guiding value for the international community, nor will they be of any use for practical purposes. In the discussion of the 6th Committee during the 66th session of the GA, some member States already made it clear that they did not approve of this topic.

For this reason, the Chinese delegation maintains that the topic of protection of atmosphere should not be included in the agenda of the Commission for the time being. The Commission may as a first step create a study group on this matter and, once the group submits its report, decide on how to proceed on that basis.

Mr. Chairman,

With respect to the topic of Expulsion of Aliens, 32 draft articles on this topic were adopted on first reading at the 64th session of the Commission. The Chinese delegation appreciates the diligent work of the Commission and the Special Rapporteur, Mr. Kamto, and congratulates the Commission on the significant progress achieved.

Mr. Chairman,

The Chinese delegation wishes to take this opportunity to make some preliminary comments on the draft articles.

At previous meetings of this Committee, my delegation expressed the hope that the Commission would strike a balance between the rights of aliens subject to expulsion and the regulatory power of expelling States as expulsion of aliens involves complex and diverse domestic legislations and state practices. We are pleased to note that the current draft articles contain some amendments to its previous version. This shows that the Commission has endeavored to achieve such a balance with a view to leaving some room for States' maneuver in duly enforcing regulation and administration while

ensuring the legitimate rights of aliens subject to expulsion. For instance, on conditions of detention of aliens subject to expulsion, the old draft articles required that such people be detained separately from persons sentenced to penalties involving deprivation of liberty. In practice, however, there are indeed cases in which States use expulsion as an additional penalty for an alien convicted of a criminal offence. Such a provision may, therefore, create difficulty for some States, including China. The new Draft Article 19 has accommodated this concern of ours by adding the phrase "save in exceptional circumstances". The relevant commentary also elaborated on the consideration behind it.

The Chinese delegation expresses its appreciation to the Commission and the Special Rapporteur for the rigorous approach they have taken to improving the draft articles. Meanwhile, we still see room for further improvement in the draft articles. For instance, Paragraph 2 of Draft Article 23 constitutes development rather than codification of international law, which deserves our further study.

Mr. Chairman,

The Chinese delegation takes note of the Commission's proposal that the UN Secretary General invite governments and international organizations to submit comments on the newly adopted draft articles. We are convinced that active participation of States is essential to the improvement of the draft articles on expulsion of aliens, a field where national legislations and practices abound.

Thank you, Mr. Chairman.