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**STATEMENT OF THE CHAIRMAN OF THE INTERNATIONAL
LAW COMMISSION, MR. KIRILL GEVORGIAN**

Part One

Chapters I-III, XIV, IV and V: Introductory Chapters; Other decisions and conclusions of the Commission; Expulsion of aliens and Protection of persons in the event of disasters.

Mr. Chairman,

Let me begin my statement by conveying to you all the best wishes of the International Law Commission for a fruitful and accomplished session of the Sixth Committee. I congratulate you and the other members of the Bureau on your election and wish you every success. International law remains our guiding light in our efforts to make the world a better place for all. The Commission is most appreciative of the useful interaction that it has enjoyed over the years with the Sixth Committee. We are bound together by our common endeavours in the noble mission in the progressive development of international law and its codification. In this connection, I cannot fail but to acknowledge the effusive introductory comments that you have made about the important role of the Commission in this task. Our success, which is practice driven, has depended as much on the sustained dialogue with the Sixth Committee and cooperation we have received from governments. If we ask for more information on State practice and for comments, it is because we find such information very valuable in the discharge of our functions.

Mr. Chairman,

The report of the Commission at its sixty-sixth session, which I was honoured to

chair, in contained in document A/69/10. In order to facilitate debate, I will make three statements to introduce the report. This is a practice that has worked well in the past, and I have no reason not to follow it.

The present statement will first deal with the introductory **Chapters I to III and Chapter XIV, “Other decisions and conclusions of the Commission”**. Thereafter, the two of the substantive chapters will be addressed: **Chapter IV** concerns the “**Expulsion of aliens**”, while **Chapter V** addresses the “**Protection of persons in the event of disasters**”.

The next two statements will continue to address the substance of the chapters in the sequential order that they appear in the report. Accordingly, the second statement will deal with Chapters VI to VIII, respectively. These relate to the topics, **The Obligation to extradite or prosecute (aut dedere aut judicare); Subsequent agreements and subsequent practice in relation to the interpretation of treaties; Protection of the Atmosphere; and Immunity of State officials from foreign criminal jurisdiction**.

My final statement will cover the remaining substantive Chapters, which concern the “**Identification of customary international law**”; the “**Provisional application of treaties**”; the “**Protection of the environment in relation to armed conflicts**”; and “**The Most-favoured-Nation clause**”. These are chapters IX to XIII, respectively.

Mr. Chairman,

Chapters I-III and XIV: Introductory Chapters and Other decisions and conclusions of the Commission

With its session this year, the Commission passed the mid-point of the current quinquennium. As Chapter II, containing the Summary, shows, the Commission completed on second reading a set of draft articles, together with commentaries, on the

“Expulsion of aliens”. As intimated last year, it also completed on first reading a set of draft articles, together with commentaries, on the **“Protection of persons in the event of disasters”**. Moreover, it adopted its final report on the topic on **“The obligation to extradite or prosecute (*aut dedere aut judicare*)”**, bringing to a close its consideration.

The Commission also continued its substantive consideration of the **“Immunity of State officials from foreign criminal jurisdiction”**; **“Subsequent agreements and subsequent practice in relation to the interpretation of treaties”**, and the **“Identification of customary international law”**. In the process, it provisionally adopted some draft articles, together with commentaries, on the first mentioned topic and some draft conclusions, together with commentaries, on the two other topics.

The Commission, through its Study Group, also continued to make further advance on topic, **“The Most-Favoured-Nation Clause”**. It may be feasible that next year, a final report on the topic could be completed. Further discussion also continued on the topic **“Provisional application of treaties”**. Moreover, the Commission was able to receive and consider the preliminary report on topic **“Protection of the environment in relation to armed conflicts”**, on which an exchange of views already occurred last year and on the **“Protection of the Atmosphere**. It will be recalled that these two topics were placed on the Commission’s current programme of work last year.

During the present session, the Commission decided to include in its current programme of work the topic **“Crimes against humanity”** and to appoint Mr. Sean D. Murphy as Special Rapporteur. Moreover, it included the topic, **“*Jus cogens*”** in its long term programme of work, on the basis of the syllabus, which appears in Annex A to the Commission’s report. The Commission’s Working Group on the Long term of Programme of work continues to consider further proposals of future topics. In the meanwhile, the Commission, in view of an identified need by the Working Group to conduct a systematic review of the work of the Commission and survey of possible future topics for its consideration, requested the Secretariat to review the illustrative general scheme of topics last developed in 1996 in the light of subsequent developments and to

prepare a list of potential topics (“survey”), accompanied by brief explanatory notes, by the end of the present quinquennium.

In **Chapter III** of the report, the attention of governments is drawn to information on practice whose provision would be particularly useful to the Commission as it continues its consideration of the various topics. As I later address each relevant substantive chapter, I will draw attention to the specific question addressed by the Commission for the particular attention of governments. As mentioned at the beginning of my statement, information on State practice that Governments submit on the various topics under consideration is an essential part of the working methods of the Commission. It is important that the Commission receives information from as many States, representing all regions of the world, as possible.

Mr. Chairman,

The Commission has continued its traditional exchanges with the International Court of Justice, as well as its cooperation with other bodies engaged in the progressive development of international law and its codification. The visit of the President of the Court this year coincided with the convening of a commemorative meeting of the fiftieth anniversary of the International Law Seminar. The theme of the meeting, was “International law as a profession”. All speakers, among them President Tomka, who was once a participant of Seminar, bore living testimony to the value of the seminar in the growth of international law as a profession that is vibrant, and in helping to connect young professionals across cultures and civilizations in the service of humanity.

As the seminar soon begins the first year towards the century mark, it is worth reminding ourselves that its continued sustainability depends on the generosity of States. The Commission expresses its gratitude to all States that many contributed towards the

convening of the seminar over the years.

Let me conclude this introductory part by saying a brief word of appreciation for the work of the Commission's Secretariat: the Codification Division of the Office of Legal Affairs. The Commission is most appreciative of the valuable assistance of the Division in its substantive servicing of the Commission and its involvement in research projects on the work of the Commission. The work of the Division constitutes an essential pillar in the working methods of the Commission.

Chapter IV: Expulsion of aliens

Mr. Chairman,

I shall now turn to the substantive chapters of the report, starting with **Chapter IV**, concerning the topic "**Expulsion of aliens**". As noted earlier, the Commission this year undertook and completed the second reading of the draft articles on the expulsion of aliens. This work was undertaken on the basis of the ninth report of the Special Rapporteur, Mr. Maurice Kamto, as well as of written comments and observations on the first reading text of 2012 received from Governments. The subject of the expulsion of aliens has been the subject of the Commission's attention for nearly 60 years and is on its agenda since 2004. The draft articles, together with commentaries thereto, are to be found in paragraphs 44 and 45 of the report.

As can be seen from the report, the basic structure of the draft articles, as adopted on first reading, has been retained. Some provisions were reformulated and one article was deleted. In addition, a number of changes were introduced to the commentaries. I propose now to provide a brief overview of the structure of the 31 draft articles, focusing on substantive changes made to the first reading text.

The draft articles on the expulsion of aliens are structured into five parts. **Part One**, which contains the "**General Provisions**" is constituted of five draft articles.

Draft article 1 pertains to the **scope** of the draft articles. Paragraph 1 defines the scope in general terms. For the sake of clarity and in order to address concerns expressed by some governments, this paragraph does not refer explicitly to aliens present “lawfully or unlawfully” on the territory of a State. This amendment does not imply any modification as to the scope *ratione personae* of the draft articles. Rather, it was done to avoid giving the misleading impression that each provision of the draft articles applies generally to both categories of aliens, when some provisions distinguish between these two categories. Paragraph 2 excludes certain categories of individuals who would otherwise be covered by virtue of paragraph 1.

Draft article 2 constitutes the traditional provision on “**Use of terms**”. It provides the definitions, for the purpose of the draft articles, of the two central concepts of the topic, namely “expulsion” and “alien”.

Draft article 3, entitled “**Right of expulsion**”, is the core provision of the draft articles that balance the uncontested right of the State to expel an alien from its territory with the limitations to this right under international law. It recognizes the right of the State to expel an alien from its territory, while reminding that the exercise of this right is regulated by the present draft articles, without prejudice to other applicable rules of international law, in particular those relating to human rights.

Draft article 4 confirms that the exercise of the right to expel by the State is conditioned by the adoption of a decision reached **in accordance with law**.

Draft article 5 deals with the different aspects of the question of the “**grounds for expulsion**”. Paragraph 1 indicates that any expulsion decision shall state the ground on which it is based. Paragraph 2 recalls the obligation of the State to expel an alien only on a ground that is provided for by law. The explicit mention of the grounds of national security and public order was deleted, since these grounds refer to exceptional circumstances and are referred to in the commentary. Paragraph 3 was amended for similar reasons. Paragraph 4 sets out that a State shall not expel an alien on a ground that is contrary to “its obligations under international law”.

Part Two of the draft articles deals with various “**cases of prohibited expulsion**”. It consists of six draft articles.

Draft article 6 deals with **the expulsion of refugees**, which is subject to restrictive conditions by virtue of the relevant rules of international law. In order to address the possible discrepancies between the draft articles and the international law and practice on refugees on one hand, and to emphasize the special protection against expulsion they enjoy under international law, on the other hand, it was decided to reformulate **draft article 6**. It states, generally, that the draft articles are “without prejudice to the rules of international law relating to refugees, and to any more favourable rules or practice on refugee protection.” Further, **draft article 6** emphasizes specific rules on the international law of refugees bearing a particular importance for the topic.

The same approach has been followed regarding **draft article 7**, which relates to **the rules relating to the expulsion of stateless persons**. It has been reformulated as a “without prejudice” clause, in order to avoid possible discrepancies between the present draft articles and the existing regime on stateless persons. **Draft article 7** also sheds light to the specific rule prohibiting the expulsion of a stateless person lawfully in the territory of the State save on grounds of national security or public order.

Draft article 8 sets forth the prohibition of the deprivation of nationality for the sole purpose of expulsion.

Draft article 9 addresses the specific question of the **prohibition of collective expulsion**. Paragraph 1 of draft article 9 contains a definition of collective expulsion for the purpose of this draft article, while paragraph 2 sets out the prohibition of the collective expulsion of aliens. Paragraph 3 specifies the conditions on the basis of which the members of a group of aliens may be expelled concomitantly, without such measure being regarded as a collective expulsion within the meaning of the draft articles. Finally, paragraph 4 contains a “without prejudice” clause referring to situations of armed conflicts.

Draft article 10 relates to the **prohibition of disguised expulsion**. It is intended to indicate that a State does not have the right to utilize disguised or indirect means or techniques in order to bring about the same result that it could obtain through the adoption of a formal expulsion decision. This article involves cases where the disguised expulsion is done by the State itself, as well as cases where it tolerates acts by national or other persons with the same objective. Paragraph 1 sets out the principle of the prohibition. The definition of disguised expulsion contained in paragraph 2 has been refined with a view to presenting more clearly the two elements characterizing it, namely that the alien is compelled to leave the territory as the intentional result of an action or omission attributable to the State.

Draft article 11 recalls the **prohibition of confiscatory expulsion**, that is, expulsion with the aim of unlawfully depriving an alien of his or her assets.

Draft article 12 sets out in general terms the prohibition against resorting to **expulsion in order to circumvent an ongoing extradition procedure**.

Part Three addresses the question of **protection of the rights of aliens subject to expulsion**, first from a general standpoint (chapter I), then by dealing more specifically with the protection required in the expelling State (chapter II), the protection in relation to the State of destination (chapter III) and the protection in the transit State (chapter IV).

Chapter I contains the “**General Provisions**”. It is composed of three draft articles. **Draft article 13** relates to the **obligation of States to respect the human dignity and human rights of aliens subject to expulsion**. Paragraph 1 sets out the obligation of the expelling State to treat all aliens subject to expulsion with humanity and respect for the inherent dignity of the human person at all stages of the expulsion process. Paragraph 2 simply recalls that all aliens subject to expulsion are entitled to respect for their human rights.

Draft article 14 concerns the **prohibition of discrimination** in the context of the expulsion of aliens. This draft article was refined in order to address the concerns

expressed by some Governments regarding the very general prohibition that was set out in the text adopted on first reading. The new formulation refers more directly to the rule that the expelling State is not prohibited to make certain distinctions, but that it has the obligation to respect the rights of the alien subject to expulsion without discrimination of any kind on grounds impermissible under international law.

Draft article 15 sets out the particular requirements concerning the expulsion of **vulnerable persons**, such as children, older persons, persons with disabilities and pregnant women. The first paragraph states the principle and provides a non-exhaustive list of vulnerable persons. Paragraph 2 deals with the specific case of children.

Chapter II deals with the “**Protection required in the expelling State**”. It is composed of five draft articles.

Draft article 16 recalls the **obligation of the expelling State to protect the right to life of an alien subject to expulsion**, while **draft article 17** sets out the general **prohibition, in the context of expulsion, of torture or cruel, inhuman or degrading treatment or punishment**.

Draft article 18 establishes the obligation of the expelling State to respect **the right to family life** of an alien subject to expulsion. The Commission redrafted the text adopted in 2012 by using the terms of the International Covenant on Civil and Political Rights, which are also used in the other regional instruments on protection of human rights. Draft article 18 therefore indicates that the expelling State shall not interfere arbitrarily or unlawfully with the exercise of the right to family life.

Draft article 19 sets out the specific rules relating to the **detention of an alien for the purpose of expulsion**. It was amended in order to establish clearly that its scope was limited to detention for the purpose of expulsion and did not cover detention for any other reason. In addition, subparagraph (a) has been refined in order to clarify that the principle of the non-punitive nature of the detention shall not be arbitrary. Subparagraph (b) provides that, save in exceptional circumstances, an alien who is detained in the

course of an expulsion procedure must be held separately from persons sentenced to penalties involving deprivation of liberty.

Draft article 19, paragraph 2 (a) is general in scope and sets out the principle that the detention of an alien with a view to his or her expulsion is subject to time limits. Sub-paragraph (b) has been amended with a view to focusing on the principle, explained in the commentary, that the decision to extend the duration of the detention of an alien for the purpose of expulsion can be taken only by a court, or by another authority subject to judicial review. Paragraph 3 (a) sets out the requirement of regular review of the detention of an alien for the purpose of expulsion on the basis of specific criteria established by law. Sub-paragraph (b) relates to the principle that detention for the purpose of expulsion shall end when the expulsion cannot be carried out, except where the reasons are attributable to the alien concerned.

Draft article 20 concerns the **protection of the property of an alien subject to expulsion** and establishes two obligations for the expelling State. The first relates to the adoption of measures to protect the property of the alien in question, while the second concerns the free disposal by an alien of his or her property.

Chapter III addresses the question of the **protection in relation to the State of destination**. It is composed of four draft articles.

Draft article 21 concerns the general protection that an expelling State must accord to an alien subject to expulsion in relation to his or her **departure to a State of destination**. This draft article covers the possibility of both voluntary departure and forcible implementation of the expulsion decision. Paragraph 1 provides that the expelling State shall take appropriate measures to facilitate the voluntary departure of an alien subject to expulsion. Paragraph 2 concerns cases of forcible implementation of an expulsion decision. Paragraph 3 requires the expelling State to give the alien a reasonable period of time to prepare for his or her departure.

Draft article 22 concerns the determination of **the State of destination of aliens subject to expulsion**. Paragraph 1 identifies the State of destination as the State of

nationality of the alien subject to expulsion or any other State that has the obligation to receive the alien under international law, or any other State willing to receive the alien at the request of the expelling State or of the alien expelled. Paragraph 2 addresses the situation where it has not been possible to identify the State of nationality or another State where the alien could be expelled under paragraph 1.

Draft article 23 deals with the question of the protection **of the life of an alien subject to expulsion in relation to the situation in the State of destination**. The Commission has considered more appropriate to delete from paragraph 1, and from the title of draft article 23, the prior reference to “freedom”, which was interpreted by Governments as going beyond the scope of the 1951 Refugee Convention. Paragraph 2 concerns the specific prohibition to expel an alien to a State of destination where his or her life would be threatened by the imposition or execution of the death penalty, unless an assurance has previously been obtained that the death penalty will not be imposed or, if already imposed, will not be carried out. The language of paragraph 2 has been refined in order to indicate that the expelling State which does not apply the death penalty shall not expel an alien to a State where he or she has been sentenced to the death penalty or where there is a real risk that he or she will be sentenced to death.

Draft article 24 requires the expelling State **not to expel an alien to a State where there are substantial grounds for believing that he or she may be subjected to torture or to cruel, inhuman and degrading treatment**. It is inspired by article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, in view of a number of developments at the universal level and in certain regional systems, draft article 24 broadens the scope of the protection afforded by this provision of the Convention, since the obligation not to expel contained in the draft article covers not only torture, but also other cruel, inhuman or degrading treatment or punishment.

Chapter IV, which is constituted of a single draft article, concerns the **protection of the alien subject to expulsion in the transit State**. **Draft article 25** sets out the

obligation of the States through which an alien expelled might transit to protect the human rights of this alien in conformity with their obligations under international law.

Part Four addresses the **specific procedural rules** applicable in the context of the expulsion of an alien. It is composed of three draft articles.

Draft article 26 sets out the **procedural rights of aliens subject to expulsion**. Paragraph 1 draws a list of procedural rights from which any alien subject to expulsion must benefit, irrespective of whether that person is lawfully or unlawfully present in the territory of the expelling State. Paragraph 2 specifies that the procedural rights listed in paragraph 1 are without prejudice to other procedural rights or guarantees provided by law. Paragraph 3 refers to the alien's right to seek consular assistance, which is not synonymous with a right to obtain that assistance. In paragraph 4, the Commission has considered appropriate to replace the six-month threshold, in view of the Governments' comments, by the more flexible indication of "a brief duration".

Draft article 27 recognizes the **suspensive effect of an appeal lodged against an expulsion decision** by an alien lawfully present in the territory of the expelling State. This provision, which constitutes progressive development of international law, has given rise to many comments from governments concerned about its broad scope. The Commission has considered that the suspensive effect shall apply only to situations where the absence of such an effect could entail serious irreversible harm for the alien subject to expulsion who is lawfully present in the territory of the expelling State. Draft article 27 has therefore been amended accordingly.

The purpose of **draft article 28** is to make clear that the aliens subject to expulsion may, in some cases, be entitled to **individual recourse to a competent international body**.

Part Five deals with the **legal consequences of expulsion**. It is formed of three draft articles.

Draft article 29 states, as an exercise in progressive development, that an alien who has had to leave the territory of a State owing to an unlawful expulsion has the right

to re-enter the territory of the expelling State. This provision concerns solely the case of an alien lawfully present in the territory of the State in question who has been expelled unlawfully and applies only when certain conditions are met.

Draft article 30 sets out the principle that an expulsion in violation of a rule of international law entails the **international responsibility** of the expelling State for an internationally wrongful act, while **draft article 31** refers to the institution of **diplomatic protection**, for which the legal regime is well established in international law.

Mr. Chairman,

This concludes my overview of the draft articles, as adopted on second reading. Upon adopting the draft articles and commentaries thereto, the Commission decided, in accordance with its Statute, to recommend to the General Assembly that it take note of the draft articles in a resolution, annex them to the resolution, and encourage their widest possible dissemination and that the General Assembly consider, at a later stage, the elaboration of a convention on the basis of the draft articles. Allow me also to draw attention to the tribute of the Commission to the Special Rapporteur, under whose able guidance the work was brought to a successful conclusion.

Chapter V: Protection of persons in the event of disasters

Mr. Chairman,

I turn now to the second substantive topic to be considered in the first cluster, namely the “**Protection of persons in the event of disasters**”. The Commission considered this topic on the basis of the seventh report of the Special Rapporteur, Mr. Eduardo Valencia Ospina, which dealt with the protection of relief personnel and their equipment and

goods, as well as the relationship of the draft articles with other rules. The report also included a proposal for the use of terms.

It pleases me to inform the Committee that, following the conclusion of its consideration of the seventh report, the Commission adopted, **on first reading, a set of 21 draft articles on the protection of persons in the event of disasters**. The draft articles, together with commentaries thereto, are to be found in paragraphs 55 and 56 of the report.

It may be noted that Commission reordered several draft articles, which had been adopted in previous years, with a view to improving the overall coherence of the text. For ease of reference, the prior numbers of draft articles adopted at earlier sessions are appear in square brackets. The Commission decided to leave for consideration, on second reading, the question of merging draft articles, of introducing chapter headings, and of drafting a Preamble.

Let me now provide a **brief overview of the draft articles**. Draft articles 1 to 4 contain general provisions dealing with the scope of the draft articles, their purpose, the definition of disaster as understood in the draft articles, as well as definitions of several terms found in the draft articles, respectively. Draft articles 5 [7] to 7 [6] provide the general orientation for the entire set of draft articles, namely that the inherent dignity of the human person, as well as the human rights of persons affected by disasters, should be respected, and that the response to disasters should be undertaken in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination.

Draft articles 8 [5] to 10 [5 *ter*] deal with the duty to cooperate, as well as the forms of such cooperation. Draft article 11 [16] concerns the duty to reduce the risk of disasters. Draft articles 12 [9] to 15 [13] and 17 [14] deal with the position of the affected State, including: its role; its duty to seek external assistance; its right to grant or withhold consent to such assistance; its right to place conditions on the provision of external

assistance; and its duty to facilitate external assistance, respectively. Draft article 16 [12] concerns offers of external assistance. Draft article 18 deals with the protection of relief personnel equipment and goods. Draft article 19 [15] concerns the issue of termination of external assistance. Draft articles 20 and 21 [4] address the relationship of the draft articles to other rules, including international humanitarian law.

Mr. Chairman,

Other than minor technical adjustments, the Commission did not introduce any substantive changes to the draft articles previously adopted. Accordingly, the rest of my statement on this chapter will focus on the three new draft articles adopted by the Commission at this year's session. These are draft articles 4, 18 and 20.

Draft article 4 provides **terms** used for the purposes of the draft articles. Subparagraph (a), which defines "affected State", reflects the fact that the draft articles are primarily addressed to States. It further establishes the scope of the draft articles to include not only disasters occurring on the territory of the affected State, but also disasters on territories or in areas under the jurisdiction or control of that State. The definition further reflects the focus of the draft articles on the effect on persons. Accordingly, the formulation of the phrase "affected by a disaster" reflects the contemporary view that the focus of attention is on the effects of a disaster on persons and property, as opposed to the disaster itself.

Under subparagraph (b) a State is considered an "**assisting State**" once the assistance is being or has been provided. The phrase "a State providing assistance" is a reference to the concept of "external assistance", which is defined in subparagraph (d).

Subparagraph (c) defines "**other assisting actor**" in terms which include those entities or individuals which typically provide assistance to affected States, which include but are not limited to the United Nations, and other international organizations as well as non-governmental organizations and other entities and even individuals. Such reference

to other organizations and entities is intended to be without prejudice to their different legal status under international law. The phrase “external to the affected State” was included to clarify that the draft articles do not regulate the activities of actors internal to the affected State, such as domestic non-governmental organizations.

Subparagraph (d), on “**external assistance**”, defines the type of assistance which the draft articles envisage assisting States or other assisting actors providing to the affected State, as a form of cooperation anticipated in draft articles 9 [5 bis] and 10 [5 ter]. The concluding clause seeks to clarify the purpose for which external assistance ought to be provided, namely “for disaster relief assistance or disaster risk reduction”, and which is intended as a reference to the overall purpose of the draft articles, as set out in draft article 2 [2], namely to “facilitate an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights”.

Subparagraph (e) defines the **personnel component of external assistance** provided by assisting States or by other assisting actors. The definition indicates the two types of personnel which are typically sent for the purpose of providing disaster relief assistance or disaster risk reduction, as alluded to in draft article 17 [14], subparagraph 1(a), namely “civilian” or “military” personnel. The Commission understood that such personnel are typically “specialized” personnel, as referred to in the annex to General Assembly resolution 46/182, in that what is expected are personnel which enjoy the necessary skill set, and are provided with the necessary equipment and goods, as defined in subparagraph (f), to perform the functions in question.

Subparagraph (f), in turn, defines “**equipment and goods**” for purposes of the draft articles. Two types of material are envisaged: the technical “equipment” required by the disaster relief personnel to perform their functions, both in terms of their own sustenance and in terms of what they require to provide relief, such as supplies, tools and machines; and the “goods” necessary for the survival and the fulfilment of the essential needs of the victims of disasters, such as foodstuffs, drinking water, medical supplies, means of shelter, clothing and bedding.

Mr. Chairman,

Draft article 18 establishes the **obligation for the affected State to take the measures which would be appropriate in the circumstances to ensure the protection of relief personnel, equipment and goods** involved in the provision of external assistance. The draft article complements draft article 17 [14] in establishing a coherent set of obligations whereby the affected State is expected to perform a series of activities which are necessary in order to guarantee to assisting States and other assisting actors the possibility to deliver efficient and prompt assistance. The measures to be adopted by the affected State may vary in content and can imply different forms of State conduct due to the context-driven nature of the obligation concerned. In particular, the flexibility inherent in the concept of “appropriate measures” suggests that the affected State may assume different obligations depending on the actors involved in potential threats to relief personnel, equipment and goods.

The envisaged obligation operates in different ways. It includes the obligation of the affected State to prevent its organs from adversely affecting relief activities. Such obligation is one of result, with a clear content that imposes the duty on the affected State not to cause harm to the personnel, equipment and goods involved in external assistance through acts carried out by its organs. At the same time, draft article 18 contemplates a series of measures to be adopted to prevent detrimental activities caused by non-State actors aimed, for instance, at profiting from the volatile security conditions that may ensue from disasters in order to obtain illicit gains from criminal activities directed against disaster relief personnel, equipment and goods. In this respect, the draft article envisages an obligation of conduct instead of one of result. The affected State is not expected to succeed, whatever the circumstances, in preventing the commission of harmful acts but rather to endeavor to attain the objective sought by the relevant obligation. The wording “appropriate measures” thus also serves to provide a margin of discretion to the affected State in deciding what actions to take. These are considered more fully in the commentary to the provision. It should also be noted that International humanitarian actors can themselves contribute to the realization of the goal sought by

adopting in their own planning and undertaking of operations, a series of mitigation measures geared to reducing their vulnerability to security threats.

Mr. Chairman,

Draft article 20 deals with the **relationship between the draft articles and special or other rules of international law**. It seeks to clarify the way in which the draft articles interact with certain rules of international law which deal with the same subject matter of the draft articles, or are not directly concerned with disasters but would nonetheless apply in situations covered by the draft articles. Accordingly, treaties or other rules of international law that set out obligations having a higher degree of specificity than the present draft articles are not displaced by them. This approach reflects the *lex specialis* principle and is aimed at safeguarding the continued application of existing obligations regarding matters covered by the draft articles. Draft article 20 covers different forms of special rules, which may include more detailed rules enshrined in treaties whose scope *ratione materiae* falls within that of the present draft articles (such as regional or bilateral treaties on mutual assistance in case of disasters), as well as those included in treaties devoted to other matters but which contain specific rules addressing disaster situations.

The draft article also covers the relationship with “other rules”, which is a reference to the interaction between the draft articles and rules of international law which are not directly concerned with disasters, but which nonetheless may be applied in the event of disasters (such as those concerning the law of treaties). This category of rules is also not displaced by the draft articles.

Draft article 20 further applies to the rules of customary international law. Since the draft articles do not cover all the issues which may be relevant in the event of disasters, they do not preclude the further development of customary international rules in the field.

Mr. Chairman,

Having introduced these three draft articles, I wish to conclude by drawing the attention of the Sixth Committee to the recommendation of the Commission, made in accordance with articles 16 to 21 of its Statute, that the draft articles be transmitted, through the Secretary-General, to Governments, as well as competent international organizations, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by **1 January 2016**. The Commission also indicated that it would welcome comments and observations on the draft articles from the United Nations, including the Office for the Coordination of Humanitarian Affairs and the United Nations Office for Disaster Risk Reduction, by the same date. Allow me also to recall the expression of deep appreciation the Commission to the Special Rapporteur, Mr. Eduardo Valencia-Ospina, whose outstanding contribution has enabled it to bring to a successful conclusion its first reading of the draft articles.

Mr. Chairman,

This concludes my introduction of chapter V of the report, as well as the first cluster of issues.

Thank you for your attention.