

STATEMENT

BY

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TO THE GOVERNEMENT OF INDIA**

ON

AGENDA ITEM 78

FIRST CLUSTER OF THE INTERNATIONAL LAW COMMISSION TOPICS

AT THE

**SIXTH COMMITTEE OF THE 69TH SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY**

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Mr. Chairman,

As I am speaking for the first time I congratulate to you on your election as the Chairman of the Sixth Committee. I also congratulate other members of the Bureau and I extend my delegation's full cooperation.

I would also like to thank the Chairman of the International Law Commission Mr. Kirill Gevorgian for his detail presentation of the Commission's report. We now focus on issues of part I, especially, Chapters IV & V of the ILC report.

Expulsion of Aliens

On the topic "Expulsion of aliens", the Commission adopted, on second reading, a set of 31 draft articles, together with commentaries thereto. We take note of the Commission's recommendation to annex the draft articles in the resolution, and to encourage their widest possible dissemination; and to consider, at a later stage, the elaboration of a Convention on the basis of the draft articles.

We recognize and congratulate the importance of work done by the Special Rapporteur Mr. Maurice Kamto and for elaborating the draft articles on this topic.

The approach adopted with regard to the right of a State to expel an alien and the rights and remedies available to the person subject of expulsion, including the legal consequences of unlawful expulsion are in general acceptable to us.

We recognize, in principle, the right of a State to expel an alien from its territory as provided under draft article 3 as exercised in accordance with the applicable rules of international law, particularly the human rights law. We would like to emphasize that the State concerned must also take into account the minimum standards of the treatment of aliens.

We found the provision under draft article 12, prohibiting expulsion in order to circumvent an extradition procedure, a convincing one. Although the expulsion and extradition both have the effect of a person leaving from the territory of State to another, however, the legal basis and the laws governing the process and the procedure are altogether different and one cannot be used as an alternate for the other.

We consider that the issues relating to the suspensive effect of an appeal against an expulsion decision under the draft article 27, recourse to a competent international body and the re-admission of aliens into the expelling State under draft article 29 require more understanding as there is no sufficient State practice in this regard. Recourse to an international body might raise issues relating to competence of such bodies where the expelling State is not a party to the relevant international instrument.

Protection of persons in the event of disasters

We congratulate the Special Rapporteur, Mr. Eduardo Valencia Ospina for his seventh report on the subject. Through this report the Special Rapporteur proposed five draft articles for consideration of the Commission. This report and the ILC drafting Committee report enabled the Commission to complete the first reading of 21 draft articles and also to adopt the commentary thereon at its Sixty-Sixth Session.

We note that the Commission adopted the new draft articles, namely Articles 4, 18, 20 and 21, on the use of term; Protection of relief personnel, equipment and goods; Relationship to special or other rules of international law; and Relationship to international humanitarian law, respectively.

While we commented earlier on the other draft articles, we now focus on some aspects of the new articles introduced by the Special Rapporteur and adopted by the International Law Commission.

We consider in general that the set of draft articles 1 to 21 adopted by the Commission represent the progressive development of international law, rather than codification of

law. These provisions could be used as guidelines to the stakeholders concerned, especially by the assisting States and entities.

We appreciate the Commission's inclusion of territory, which is *de jure* and *de facto* within the jurisdiction or control of the "affected state" (i.e., relief receiving State) in draft Article 4 Paragraph (a). We, however, consider that the "request or consent" of the "affected State" should be the legal basis for sending "external assistance" in the form of "equipment and goods" by the assisting States or entities as provided in paragraphs (d) and (f) of draft article 4.

We note that the "relief personnel", as provided in paragraph (e) of article 3, include civilian as well as military personnel. We appreciate that in case of "disasters" as defined in Article 3, introduction of trained personnel, including military personnel and equipment is needed. However, for sending of personnel especially, the military personnel or equipment as a form of external assistance, the prior, express and informed 'agreement or consent' of the affected State is needed. Such consent cannot be presumed by the assisting States or entities.

We appreciate the affected State's general responsibility under draft article 18 to take "appropriate measures" for the protection of relief personnel, equipment and goods in its territory.

The expression, taking "all necessary measures" as introduced by the Special Rapporteur in his 7th report, would be onerous and burdensome on the effected State, for the affected State struck by the disaster or calamity would not be in a position to take care of protection and safety of life and property of its own people and property.

We reserve our comments on the other draft articles adopted by the Commission, including on the meaning of "other assisting actor", "competent" IGOs, "relevant" NGOs, "other entities", in paragraph (c) of draft article 4, and provide comments them as well as on other matters later.