



**Statement by
H.E. Mr. Ferry Adamhar
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On Agenda Item 78
Report of the International Law Commission
on the work of its Sixty-sixth session
New York, 29 October 2014**

Mr. Chairman,

At the outset, my Delegation would like to express our appreciation to the International Law Commission for its laudable achievements in continuing its important contribution to the promotion of the progressive development of international law and its codification. I would also like to express my appreciation to the Chairman of the ILC, Mr. Kirill Gevorgian, for his presentation on the work of the Commission during its 66th session.

Allow me now to make a few comments and observations on several issues contained in the report.

First: expulsion of aliens.

Mr. Chairman,

With regard to the work of the Commission on expulsion of aliens, Indonesia welcome with appreciation the adoption of a set of 31 draft articles, together with commentaries thereto. We would also commend the Special Rapporteur, Mr. Maurice Kamto, for his outstanding efforts and excellent work.

This topic touches on sensitive issues, including State sovereignty; the rights of aliens; whether the draft articles reflect codification or progressive development of international law; and whether the draft articles are reflective of a progressive development rather than codification. Another issue of debate on the draft articles relates to the concerns of the final form of the draft articles; whether it should be in the form of a convention, or rather in the form of soft law, which may be a set of principles or guidelines, a framework convention, or a set of principles enunciating best practices.

Concerning the balance between the rights of the State on the basis of sovereignty and the rights of the alien present in the territory of that State, it is our view that the draft articles as they stand now, have achieved some balance. However, the Commission should take into account the views expressed by States on certain draft articles. One example relates to the observations made by several States that the draft articles have expanded the scope of non-*refoulement* protections, that will to a certain extent unduly limit State

sovereignty, thus digressing from the provisions of widely adhered human rights treaties and national laws and jurisprudence. The draft articles have been the subject of those comments are Draft Article 6 (Prohibition of the expulsion of refugees); Draft Article 23 (Obligation not to expel an alien to a State where his or her life or freedom would be threatened); and Draft Article 24 (Obligation not to expel an alien to a State where he or she may be subjected to torture or to cruel, inhuman or degrading treatment or punishment). The Commission, in our view, should review the said draft articles and the commentary thereto and consider the necessary adjustments.

As regards the concern that the draft articles represent progressive development rather than codification, my delegation is of the view that the draft articles contain not only provisions reflecting the progressive development of international law on the topic of expulsion of aliens, but also a considerable number of provisions reflecting the codification of a well-established State practice, supplemented by extensive case law. We further encourage the Commission to continue to review certain draft articles representing progressive development that may be subject to criticism or objection by some States, as such criticism would be beneficial towards further deliberations and development of the draft articles.

On the issue of the final form of the draft articles, I am fully aware that there are still divergent opinions on the matter. Among the States that expressed their views on the draft articles on the topic adopted by the Commission at the first reading, only several of

them have expressed their position as to the final form of the draft articles. In view of this fact, it would be premature to suggest that States prefer a convention or a soft law.

It is essential for the Commission to make the best effort to accommodate the relevant comments and suggestions made by States. It should make the necessary amendments to the draft articles and provide further clarification in the commentaries to certain draft articles, in order to ensure that the draft articles to be adopted at the second reading would be more acceptable to States. It is therefore incumbent upon the Commission to ensure that this objective is achieved.

Protection of Persons in the Event of Disasters

Mr. Chairman,

Turning to the issue of Protection of Persons in the Event of Disasters, let me begin by commending the Special Rapporteur, Mr. Eduardo Valencia-Ospina, for his excellent work on this topic. We would also like to express its appreciation to the Commission for adopting on first reading a set of 21 draft articles, together with commentaries thereto. As a country that is familiar with disaster, Indonesia continues to strengthen its national capacity to manage and mitigate disaster as well as to enhance cooperation with other countries. These efforts include the establishment of the National Agency for Disaster Relief with responsibility for providing guidance for disaster management activities, including prevention of

disasters, effective response, rehabilitation and reconstruction; information on disaster relief activities; and administration of national and/or international aid relief. Recognizing the importance of having a system for managing disaster, Indonesia promulgated Law No. 21 of 2007 regarding the management of disaster relief, which also governs, among others, international cooperation for the subject.

At the regional level, Indonesia is host to the AHA Centre (ASEAN Coordinating Centre for Humanitarian Assistance on disaster management), established as part of ASEAN's commitment to strengthen collective response to disasters and to reduce disaster losses and as mandated by the ASEAN Agreement on Disaster Management and Emergency Response (AADMER) 2005, which has been referenced by the Special Rapporteur. The AHA Centre aims to be the regional hub for information and knowledge for disaster management. It will also serve as the centre point for mobilisation of resources to disaster-affected areas and act as the coordination engine to ensure ASEAN's fast and collective response to disasters within the South East Asian region.

It is essential to reaffirm that in protecting persons in the event of disaster, consent of affected State is required. This is a basic principle, as stipulated in Article 14 paragraph 1. Furthermore, as provided in the Article, the affected State has the primary role in the direction, coordination and supervision of assistance and relief operations undertaken by both the assisting States and non-State actors, including international organizations.

Indeed, in dealing with the protection of persons in the event of disasters, we must recognize the fact that disasters occur in the territory of a sovereign State. Therefore respect for the basic principles under the UN Charter, including the principles of sovereignty, non-interference and sovereign equality of States are of paramount importance.

As regards Draft Article 13 on Duty of the affected State to seek external assistance, I wish to associate my Delegation with the views of other Delegations that have expressed concern over the article. In this connection, my Delegation would like to reiterate Indonesia's strong reservation on Draft Article 13. Imposing duty on the affected State to seek external assistance in the event that a disaster exceeds its national capacity will undermine the principles of sovereignty, non-intervention and the requirement of consent of the affected States, and the need for a balance to be struck between those principles and the responsibility of the affected State. Neither has the obligation to seek external assistance a legal basis in State practice. Furthermore, imposing such an obligation on the affected State does not duly represent the principle of cooperation in mitigating disasters, and instead it will disrupt international cooperation in the event, for instance, that a refusal to seek external assistance could incur State responsibility. It is essential to respect the right of the affected State to have its options open whether or not it will seek external assistance in accordance with its own judgment. My Delegation believes that drafting legal provisions on the topic should not be based on one or two incidents

where a State had refused external assistance. It is therefore necessary for the Commission in its second reading to make the necessary amendments to Draft Article 13 so as to ensure that seeking external assistance to the extent that a disaster exceeds its national response capacity, is not an obligation, but rather a *commendatio non obligat* (recommendation that is not binding) addressed to the affected State.

We support the inclusion of Draft Article 18 on the obligation to protect disaster relief personnel and their equipment and goods. The nature of such obligation is indeed an obligation of conduct and not of result. Such a characterization means that preventive measures should be adopted by the affected State, as an attempt to avoid the commission of criminal activities that is harmful to the relief of personnel and their goods and equipment. Obligation that requires result will indeed constitute an onerous burden to the affected states. Furthermore, failure to achieve the desired effect of the obligation could incur state responsibility of the affected state.

Before I conclude, **Mr. Chairman,**

My delegation wishes to reiterate the view that in order to contribute to the work on international law, it is imperative that we should continue to foster even stronger and more intensive engagement between the ILC and the 6th Committee.

I thank you.

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