

Statement by
Mr. Mahmoud Khoubkar
Representative of the Islamic Republic of Iran

Before the Sixth Committee
69th Session of the United Nations General Assembly

On Agenda item 78:
**Report of the International Law Commission
on the work of its sixty-sixth sessions**

Chapters IV and V:
Expulsion of aliens
Protection of persons in the event of disasters

New York, 29 October 2014

In the name of God, the Compassionate the Merciful

Mr. Chairman,

At the outset I would like to begin by expressing my delegation's appreciation to Mr. Kirill Gevorgian, Chairman of the International Law Commission for his comprehensive presentation on the work of the Commission at its sixty-sixth session. We commend the members of the Commission for their contributions to the work of the Commission on its agenda items. We also recognize the efforts of the Codification Division of the Office of Legal Affairs as the secretary of the Commission.

On the work of the Commission as reflected in Chapter IV: Expulsion of aliens, I would like to congratulate the Special Rapporteur and other members of the commission for the successful conclusion of the second reading of the draft articles. Expulsion of aliens is the inherent right of sovereign States. It is the law of each State that provides the legal grounds for expulsion of aliens. But the grounds for expulsion shall not stand against treaty-based obligations of the respective States. Nevertheless, these obligations are not absolute in nature and divergence in practice is possible in certain emergency situations insofar as it is consistent with the imperative norms of international law. We also deem it necessary that those articles that are not supported by enough practices of States to be considered with regard to the above-mentioned observation.

Mr. Chairman,

We have observed that the concept on which the commission has based its consideration of the term "refugees" is described in a way that goes beyond the realm of the definition of "refugees" in 1951 Convention on the Status of Refugees. We appreciate the careful

consideration of refugee matters within the framework of the draft articles but the direction of the exercise described in the commentary of article 6 is not underpinned by sufficient State practice. According to its commentary, the term “refugee” should be understood not only in light of the general definition contained in article one of the 1951 Convention on the Status of Refugees, but also in accordance with the subsequent development of the matter including the practice of UNHCR and the definition adopted by the Organization of African Union. In regard to the former, we have to reiterate that the practice of UNHCR does not necessarily reflect the States' practice. Even within the framework of the Executive Committee of UNHCR, many States are of the view that the “Refugee Status Determination” must be strictly considered in accordance with the parameters outlined in the 1951 Convention. As a result, conclusion of the Commission on the subsequent practice on the status of refugees should be, first and foremost, based on the actual practice of States rather than the practice of UNHCR.

We understand that Mr. Maurice Kamto, the Special Rapporteur, recognizes that all the provisions of the draft articles do not have a foundation in customary international law or treaty law and on certain aspects, State practice is still limited. That is why it involves both the codification and the progressive development of international law. However, the realities of life on the international plane require that the provisions should be based on the predominant State practice in the field, which is not the case with some draft articles.

Mr. Chairman,

Turning now to the topic of “Protection of persons in the event of disasters”, I would like to thank the Special Rapporteur and the Commission for the successful conclusion of the first reading of the draft articles. We are of the view that, the affected State has the exclusive right for the recognition of the threshold of the disaster. This is the affected State that should affirm that a disaster has disrupted the functioning of the society. Therefore, the Commission in its consideration of the topic ought to refrain from any ambiguity in this regard. It is quite imperative to recall that the humanitarian assistance in principle should be provided on the basis of an appeal by the affected State.

With regard to the humanitarian principles, outlined in article 7, we are of the opinion that, those principles must be observed in parallel with the principles of respect for sovereignty, territorial integrity and national unity of the affected State. In fact, proper reflection of the provisions of the guiding principles of the UNGA Resolution 46/182 in the draft working articles of the commission is indispensable.

As to the draft article 8 on “duty to cooperate”, we believe that the wording of the draft article should not indirectly demonstrate any indication of the notion of the responsibility to protect. The core element of this draft article should be international cooperation between States and hence, the title allocated to this draft article needs to properly reflect this core element.

Furthermore, the draft article 8 has expanded cooperation among States to a non-governmental organization, which has a unique role to deal with situations under international humanitarian law. Even the predominance of application of international humanitarian law in the event of complex emergencies does not justify highlighting the name of such entity. In our

view, the explanation given under article 8, concerning the existence of complex emergencies (armed conflicts with disasters) do not comply with article 21 concerning the relationship of the draft articles with international humanitarian law. Even if we accept the explanation given by the Special Rapporteur, the obligation to cooperate in situation of armed conflict can not in our view extend to non-governmental organizations other than the ICRC.

By the same token, article 13 of the draft concerning the duty of the affected State to seek external assistance raises some concerns. This provision obliges the affected State to seek assistance from other States, United Nations and relevant governmental and non-governmental organizations. International law as it currently stands does not recognize such a duty and this has been upheld by some members of the commission as well.

Mr. Chairman,

We support the view expressed by the Special Rapporteur to include in the draft articles a provision specifying the relationship to the UN Charter. Such provision to be drafted in light of article 103 of the Charter has a merit to the extent that it highlights the cardinal role played by some principles enshrined in the Charter, namely the principles of sovereignty and territorial integrity of the affected State. It is noteworthy that an example of such a reference can be found in the ASEAN Agreement on Disaster Management and Emergency Response. This concludes my statement for the first part of the consideration of the Commission's report and I thank you.